



Arbitration CAS 2011/A/2466 FC Universitatea Cluj v. Robson Luiz Bandeira & Fédération Internationale de Football Association (FIFA), award of 26 September 2011

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football

*Sporting sanctions against a club for breach of the employment contract between a player and the club
Consequence of a settlement agreement relating to the financial dispute between the parties*

If a financial dispute between a club and a player has been settled and if FIFA has stated that, had it been informed of the settlement agreement, it would not have taken sporting sanctions against the club, the DRC Decision shall be set aside in its entirety with the consequences that the sporting sanctions should be lifted.

FC Universitatea Cluj (the “Club” or the “Appellant”) is a Romanian football club, affiliated to the Romanian Football Federation, which in turn is affiliated with FIFA.

Robson Luiz Bandeira (“the First Respondent” or “the Player”) is a professional Brazilian football player.

The Fédération Internationale de Football Association (“the Second Respondent” or “FIFA”) is the world governing body of football, which is registered in Zurich, Switzerland.

The elements set out below are a summary of the main relevant facts, as established by the Sole arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (“FIFA DRC”) on 26 January 2011 in the case between the Player and the Club, the written submissions of the parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present award.

On 20 August 2008, the Player and the Club signed an employment contract (“the Contract”) valid from 20 August 2008 until 30 June 2011.

According to the contract, the Player was entitled to a total remuneration in the amount of EUR 25,000 net for the season 2008/2009 to be paid as follows:

- EUR 5,000 net payable on 1 October 2008;
- EUR 15,000 net, payable in 10 monthly installments of EUR 1,500 each;
- EUR 5,000 net, payable on a pro rata basis of the Player plays more than 50% of the 34 official matches of the 2008/2009 championship.

For the season 2009/2010, the contract sets forth the total remuneration of EUR 25,000 net to be paid as follows:

- EUR 18,000 net, payable in 12 monthly installments of EUR 1,500 each;
- EUR 7,000 net, payable on a pro rata basis if the Player plays more than 60% of the 34 official matches of the 2009/2010 championship.

For the season 2010/2011, the contract sets forth a total remuneration of EUR 25,000 net to be paid as follows:

- EUR 18,000 net, payable in 12 monthly installments of EUR 1,500 each;
- EUR 7,000 net, payable on a pro rata basis if the Player plays more than 60% of the official matches of the 2010/2011 championship.

The payments, according to the contract, were due on the 20th day of the subsequent month.

By a letter dated 21 November 2008, the Player summoned the Club to pay his outstanding salaries for the last four months within a time limit of five days.

On 2 December 2008, the Player sent another letter to the Club, requesting the payment of his outstanding salaries within a deadline of 48 hours.

On 22 December 2008, the Player terminated the Contract, since the Club had allegedly not complied with its contractual obligations.

On 22 January 2009, the Player lodged a claim with FIFA against the Club for an alleged breach of contract by the Club, requesting the following amounts to be paid:

- EUR 6'000, corresponding to the outstanding salaries for the months of September, October, November and December 2008, of EUR 1'500 each;
- EUR 5'000, corresponding to the bonus that became due on 1 October 2008;
- EUR 64'000, as compensation, allegedly corresponding to the amounts which the Player would have been entitled to receive until the expiry of the Contract;
- Interest of 5% p.a. on the total amount, as from the date of payment of each instalment.

The Player also requested that sporting sanctions be taken against the Club, affirming that the breach of contract committed by the latter occurred during the protected period.

Despite having been invited by FIFA to do so, the Club failed to respond to the Player's claim.

In January 2011, a representative of the Club travelled to Brazil in order to negotiate a contract with a local player. On this occasion, the representative of the Club met with the Player to discuss a settlement agreement concerning the outstanding sums owed to him by the Club.

On 13 January 2011, the Player signed a receipt stating that he received from the Club, that day, a check in the amount of EUR 30'000 covering the outstanding salaries and compensation. In such agreement, the Player also recognized that he was satisfied with the payment and that he had no more claims against the Club under the Contract.

Neither the Player nor the Club informed FIFA about the abovementioned agreement.

On 26 January 2011, the FIFA DRC rendered the following decision (the “DRC Decision” or “the Appealed Decision”):

1. *The claim of the Claimant, Robson Luiz Bandeira, is partially accepted.*
2. *The Respondent, FC Universitatea Cluj, has to pay to the Claimant, Robson Luiz Bandeira, **within 30 days** as from the date of the notification of this decision, outstanding remuneration amounting to EUR 11'000.*
3. *Within the same time limit, the Respondent, FC Univeritatea Cluj, has to pay default interest of 5% p.a. on the following partial amounts until the effective date of payment to the Claimant, Robson Luiz Bandeira, as follows:*
 - *on EUR 1,500 as of 20 October 2008;*
 - *on EUR 1,500 as of 20 November 2008;*
 - *on EUR 1,500 as of 20 December 2008;*
 - *on EUR 1,500 as of 20 January 2009;*
 - *on EUR 5,000 as of 2 October 2008;*
4. *The Respondent, FC Univeritatea Cluj, has to pay to the Claimant, Robson Luiz Bandeira, compensation for breach of contract amounting to EUR 30'775 within 30 days as from the date of the notification of this decision. In the event that this amount of compensation is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the 30 days' time limit until the date of effective payment.*
5. *In the event the amounts due to the Claimant, Robson Luiz Bandeira, in accordance with the above-mentioned numbers 2,3 and 4 are not paid by the Respondent, FC Univeritatea Cluj, within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
6. *Any further requests lodged by the Claimant, Robson Luiz Bandeira, are rejected.*
7. *The Respondent, FC Univeritatea Cluj, 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. *The Claimant, Robson Luiz Bandeira, is directed to inform the Respondent, FC Universitatea Cluj, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*

On 6 June 2011, the Club filed a statement of appeal with CAS regarding the DRC Decision, requesting to set aside such decision, to establish that nothing is due to the Player, and to lift the ban on registering players and establish that no sporting sanctions shall be applied on the Club.

Together with its statement of appeal, the Club filed a request for a stay of the execution of point 7 of the operative part of the Appealed Decision, i.e. of the ban preventing the Club from registering new players.

On 15 June 2011, the Player sent a letter to the CAS informing it that he renounced to take part in the proceedings as the award rendered by the CAS would only have an impact on the Club's ineligibility to register new players for two consecutive registration periods and that the matter should therefore be settled between FIFA and the Club. He also mentioned that in view of his position, the costs of the arbitration proceedings should be borne solely by the Club.

On 16 June 2011, the Club filed its appeal brief.

On 20 June, FIFA sent a letter to the CAS stating that it refrains from objecting to the Club's request to stay the execution of point 7 of the operative part of the Appealed Decision.

On 21 June 2011, the Deputy President of the Appeals Arbitration Division of the CAS, given the Respondents' absence of objection, issued an order granting the request for provisional measures filed by the Club.

In a letter dated 28 June 2011, the Player confirmed that he did not want to take part in the proceedings and that the costs of the proceedings should be borne solely by the Appellant or FIFA.

In another letter dated the same day, the Player's counsel informed FIFA that his client only recently informed him about the existence of the agreement passed between the Player and the Club on 13 January 2011 and that the Player therefore did not have any claim against the Club.

On 12 July 2011, FIFA filed its answer with the CAS. In its answer, FIFA recalled that the proceedings leading to the Appealed Decision were initiated by the Player against the Club due to the latter's alleged failure, during the protected period, to pay the Player's remuneration and that, during the investigation, the Club did not file any submission whatsoever. In view of the circumstances and considering the information and documentation at its disposal, the FIFA DRC determined that the Club had indeed breached the employment contract signed with the Player and rendered the Appealed Decision accordingly.

FIFA further explained that it first learnt of the settlement agreement of 13 January 2011 in the appeal brief and that if one of the parties had informed it of such agreement, the FIFA DRC would not have entered into the substance of the matter and thus not have imposed any sanction on the Club. However, as the FIFA DRC was not aware of such agreement when it rendered its decision, FIFA is of the opinion that the DRC Decision remains valid. Finally, FIFA stated that in view of the settlement agreement, it is no longer appropriate to impose a sporting sanction on the Club and that it will refrain from commenting on the further alternative arguments raised by the Club, which shall however not be interpreted as any kind of agreement thereto.

In a letter dated 13 July 2011, the CAS Court Office invited the Club to inform it whether it maintains its appeal given the position expressed by FIFA in its letter dated 12 July 2011.

On the same date, FIFA wrote to the CAS stating that, by means of its previous letter dated 12 July 2011, it did not lift the sanctions imposed on the Club but merely concluded that it would leave it to the CAS to render an award in the present proceedings based on the newly submitted information and documentation.

Still on 13 July 2011, the Club sent a letter to the CAS stating that it could not withdraw its appeal in view of FIFA's position expressed in its letter dated the same date.

On 18 July 2011, FIFA sent a letter to the CAS confirming that the sporting sanctions imposed on the Club had not been lifted and that if the FIFA DRC had had the new documents and information at its disposal when it took its decision, it would not have imposed any sanctions. FIFA further emphasized that sporting sanctions are, as a matter of principle, not negotiable for FIFA and that, accordingly, it could not consider an award by consent to come into question.

On the same date, the CAS Court Office informed the parties that an award would be rendered, once the Panel constituted, on the basis of the newly submitted information and documentation.

In its letter dated 21 July 2011, the Club requested the matter to be submitted to a sole arbitrator in order to maintain the costs of the proceedings as low as possible.

On 27 July 2011, FIFA agreed to the Club's proposal to submit the matter to a sole arbitrator, provided that the appointed arbitrator would be an experienced arbitrator from the "football list".

On 23 August 2011, the Director General of the Club sent a letter to the CAS informing it that the Club would bear all the costs related to the proceedings before the CAS and that he was releasing both Respondents from any liability towards the CAS in this regard.

LAW

Jurisdiction of the CAS and admissibility of the appeal

1. The admissibility of an appeal before the CAS shall be examined in light of article R47 of the Code of Sports-related Arbitration (the "Code"), which reads 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 regulations 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.

2. The jurisdiction of the CAS, which is not disputed between the parties, derives from Articles 62 and 63 of the FIFA Statutes.
3. The Appealed Decision was notified to the Club on 17 May 2011 and the Club's statement of appeal was lodged on 6 June 2011, therefore within the statutory time limit set forth by the FIFA Statutes, which is not disputed. It complied with all other requirements of Article R48 of the Code.
4. It follows that the CAS has jurisdiction to decide the present dispute and that the appeal is admissible.
5. Under Article R57 of the Code, the Sole arbitrator has the full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the appealed one.

Applicable law

6. Article R58 of the Code states the following:
The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.
7. Article 62.2 of the FIFA Statutes states the following:
The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
8. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall primarily apply, and alternatively Swiss law.

Merits

9. The Sole arbitrator duly notes that the parties agree that the financial dispute which led to the proceedings before the FIFA DRC was settled on 13 January 2011, that is to say before the Appealed Decision was rendered, but that the FIFA DRC was never made aware of the existence of such agreement between the Club and the Player.
10. The settlement agreement concluded between the Club and the Player on 13 January 2011 was filed for the first time in the course of the present proceedings before the CAS.
11. The Sole arbitrator further duly notes that FIFA stated, in its letter dated 12 July 2011 and confirmed on 18 July 2011 that if the Club and/or the Player had informed it of such agreement, the FIFA DRC would not have imposed any sanction on the Club.

12. In light of the foregoing, considering that the Club and the Player agree that their financial dispute was settled on 13 January 2011, that the Player recognized in writing that he did not have any more claims against the Club under the Contract, and that FIFA stated that had it been informed of the settlement agreement of 13 January 2011, it would not have taken sporting sanctions against the Club, the Sole arbitrator holds that the appeal shall be upheld and the DRC Decision set aside in its entirety.

The Court of Arbitration for Sport rules:

1. The appeal filed by FC Universitatea Cluj on 6 June 2011 against Mr Robson Luiz Bandeira and Fédération Internationale de Football Association regarding the decision pronounced by the FIFA Dispute Resolution Chamber on 24 January 2011 is upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 24 January 2011 is set aside.
- (...)
5. All other prayers for relief are dismissed.