



Arbitration CAS 2006/A/1008 Rayo Vallecano de Madrid SAD v. Fédération Internationale de Football Association (FIFA), award of 21 August 2006¹

Panel: Mr Luigi Fumagalli (Italy), President; Mr Martin Schimke (Germany); Mr Michele Bernasconi (Switzerland)

Football

Disciplinary sanction

Failure to pay the entirety of the debt

Alleged difficult financial and sporting situation

- 1. Art. 68 FDC allows a sanction to be imposed on a club that has failed to pay entirely its debts to another subject. The provision is intended to confirm that it is a disciplinary duty of clubs to fully comply with the decisions of the bodies of FIFA; and a partial payment would not amount to a full compliance with the decision of the body of FIFA. A different interpretation would be inconsistent not only with the text of the rule, but also with its aim. In addition, it would be odd to admit that even a small payment – out of a large debt – allows a debtor to escape the disciplinary responsibility: the effectiveness of the system, and the binding force of the disciplinary principle underlying it, i.e., that the decisions of the FIFA bodies have to be fully complied with, would be seriously impaired.**
- 2. A difficult financial and sporting situation alleged by a club is not a justification for its failure to pay its debt to another subject. Lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment.**

Rayo Vallecano de Madrid SAD (the “Club” or the “Appellant”) is a Spanish football club existing under the laws of Spain and has its headquarters in Madrid, Spain.

The Club is affiliated to the Real Federación Española de Fútbol (the “Spanish Football Federation”), which in turn is a member of FIFA. As a result, the Club is subject to and bound by the applicable rules and regulations of the FIFA.

¹ NB: An appeal has been filed against this award before the Swiss Federal Tribunal (réf. 4P.240/2006); it has been dismissed on 9 January 2007.

On 31 October 2005 the FIFA Disciplinary Committee (DC) issued a decision (the “DC Decision”) holding that:

- “1. *The debtor is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 68 FDC.*
2. *The debtor is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 30 days of notification of the decision. Payment can be made either in Swiss francs (CHF) to account [...] or in US dollars (USD) to account [...].*
3. *The debtor is granted a final period of grace of 30 days as from notification of the decision in which to settle its debt to the creditor.*
4. *If payment is not made by this deadline, the creditor may demand in writing of the FIFA Disciplinary Committee that 6 points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has made this request, the points are to be deducted mandatorily in any case.*
5. *If the debtor still fails to pay the amount even after deduction of the points in accordance with point 4, the first team will be relegated to the next lower division.*
6. *As a Member of FIFA, the Real Federación Española de Fútbol is reminded of its duty to implement this decision and, if necessary, to produce proof to FIFA that the points have been deducted or the team has been relegated. If the Real Federación Española de Fútbol does not comply with this decision despite being ordered to do so by the FIFA Disciplinary Committee, the latter will inflict an appropriate sanction on the Member. This can lead to expulsion from all FIFA competitions.*
7. *The costs of these proceedings in the amount of CHF 1,000 are to be borne by the debtor.*
8. *The creditor is directed to inform the Disciplinary Committee immediately of every payment received”.*

The DC Decision was rendered on the basis of Article 68 of the FIFA Disciplinary Code (FDC) adopted on 29 June 2005, in force since 1 September 2005, providing for sanctions on “*anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA*”. The DC in fact noted that the Club had failed to comply with a decision issued by the FIFA Players’ Status Committee (PSC) on 15 February 2005 (the “PSC Decision”), whereby the Club was ordered to pay to the Associação Deportiva Sao Caetano of Brazil (the “Brazilian Club”) an amount of money.

More specifically, the DC remarked that:

- “1. *On 15 February 2005, the Players’ Status Committee decided that the Club FC Rayo Vallecano (hereinafter: the debtor) has to pay EUR 373,226 (CHF 578,991) to the club Sao Caetano (hereinafter: the creditor). In addition, a default interest of 5% p.a. was applied.*
2. *On 8 August 2005, the CAS terminated the procedure due to formal requirements.*
3. *On 21 September 2005, the secretary to the Disciplinary Committee opened a disciplinary procedure against the debtor and asked the debtor to immediately pay the outstanding amount as well as to send a payment proof.*
4. *On 12 October 2005, the secretary to the Disciplinary Committee sent a reminder and informed the parties that the case will be submitted to the next meeting of the FIFA Disciplinary Committee on 31 October 2005, if the amount is not paid before 26 October 2005 at the latest.*

5. *On 21 October 2005, the debtor recognised that the amount of EUR 363,333.33 plus interests is due, and maintained that EUR 10,000 have been paid on 4 October 2004, which was recognised by the creditor at the procedure before the Court of Arbitration for Sport. In addition, the debtor requested a payment plan due to the economical situation of the club.*
6. *On 24 October 2005, the secretary to the Disciplinary Committee informed the debtor that the decision has become final and binding, and that the case will be submitted to the FIFA Disciplinary Committee at its next meeting on 31 October 2005. The debtor was further informed that only if the amount is paid or if the parties reach an agreement, the case will not be submitted to the FIFA Disciplinary Committee at its next meeting on 31 October 2005.*
7. *On 28 October 2005, the creditor informed FIFA that he did not receive any amount in connection with the present case”.*

On the basis of the above:

- “3. *The Disciplinary Committee noted that the debtor maintained that EUR 10,000 have been paid so far. However, the debtor did not submit any proof of payment. In addition, the creditor maintained on 28 October 2005 that he did not receive any amount in connection with the present case. The Disciplinary Committee emphasised that the decision passed by the Players’ Status Committee on 15 February 2005 has become final and binding. Since no payment proof was submitted, the Disciplinary Committee believed that the amount stipulated in the said decision is due. As regard to the requested payment plan, the Disciplinary Committee stressed that it is not in a position to alter a decision as to the substance which has become final and binding. In addition, the Disciplinary Committee noted that the debtor did not pay the slightest amount to the creditor so far, and that the parties did not reach an agreement. Hence, as the debtor ignored the decision passed by the Players’ Status Committee on 15 February 2005 and is withholding money from the other party, it is considered guilty under the terms of art. 68 FDC.*
4. *The fine to be imposed is at least CHF 5,000. Consequently, the fine to be imposed shall be between CHF 5,000 and CHF 1,000,000 (cf. art. 16 par. 2 FDC). The fine has been increased because the amount of money due is substantial. Non-payment of such amounts can cause a club enormous financial difficulties. The debtor withheld the amount unlawfully from the creditor. Even FIFA’s attempts to urge the debtor to fulfil its financial obligations failed to induce it to pay. Considering the facts, the amount due constitutes a serious offence. In the circumstances, the Disciplinary Committee regards a fine amounting to CHF 25,000 as appropriate. This amount complies with the Disciplinary Committee’s established practice.*
5. *In application of art. 68 par. 1 b) FDC, the Disciplinary Committee considers a final deadline of 30 days as appropriate for the amount to be paid.*
6. *In accordance with art. 68 par. 1 c) FDC, the debtor will be warned and notified that, in the case of default within the period stipulated, points will be deducted or relegation to the next lower division be ordered. This will occur if the creditor informs the FIFA Disciplinary Committee of non-payment within the stipulated deadline and demands in writing that points be deducted from the debtor’s first team in the national league. Once this request has been made, the points have to be deducted mandatorily in any case.*
7. *With regard to be amount of points to be deducted, art. 68 par. 3 FDC is applicable, whereby the number of points deducted must be proportionate to the amount owed. In the light of the foregoing criteria regarding the amount of the fine to be imposed and in keeping with the Disciplinary Committee’s established practice, a deduction of 6 points is considered appropriate.*

8. *Art. 110 par. 1 FDC states that costs and expensed are to be borne by the unsuccessful party.*
9. *As a Member of FIFA, the Real Federación de Fútbol is reminded of its duty to implement this decision ...”.*

The DC Decision was notified on 6 December 2005 to the Spanish Football Federation and to the counsel assisting the Club in the proceedings before the DC. On 9 December 2005 the DC Decision was transmitted by the Spanish Football Federation to the Club, which received another copy of the same DC Decision on 20 December 2005.

On 30 December 2005 the Appellant filed a statement of appeal, dated 29 December 2005, with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the DC Decision.

On 13 January 2006 FIFA filed its answer.

By letter dated 13 February 2006 the CAS Court Office informed the parties, that the Panel had decided to deny FIFA’s application regarding the non-compliance by the Appellant of the time limit to appeal to CAS. On 16 March 2006 the Panel issued a Preliminary Decision setting forth the reasons in support thereof.

A hearing, requested by the Appellant by letter dated 27 February 2006, was held in Lausanne on 30 May 2006. At the conclusion of the hearing, the parties, after making submissions in support of their respective case, confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

LAW

Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Art. 59 ff. of the FIFA Statutes and Art. R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.
2. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Appeal Proceedings

3. As these proceedings involve an appeal against a disciplinary decision issued by a federation (FIFA), whose statutes provide for an appeal to the CAS, they are considered and treated as

appeal arbitration proceedings in a disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

4. As confirmed in the Preliminary Decision issued on 16 March 2006, the Player's statement of appeal was filed within the deadline set down in the FIFA Statutes and the DC Decision. No further recourse against the DC Decision, rendered in application of Article 68 FDC, is available within the structure of FIFA. Accordingly, the appeal is admissible.

Applicable Law

5. Pursuant to Article R58 of the Code, the Panel is required to 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".
6. Pursuant to Article 59.2 of the FIFA Statutes:
"CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss Law".
7. In this case, accordingly, the FIFA rules and regulations fall to be applied primarily, with Swiss law applying subsidiarily.
8. The FDC rules relevant to these proceedings are the following:

Article 68 ["Payment of sums of money"]:

1. *Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA:*
 - a) *will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cf. art. 55 par. 1 c) of the FIFA Statutes);*
 - b) *will be given a final time limit by the judicial bodies of FIFA in which to settle the debt;*
 - c) *if it is a club, it will be warned and threatened with deduction of points or relegation to the next lower division if it has not paid by the final time limit. Furthermore, a transfer ban may be imposed.*
2. *If the club disregards the final time limit, the body will request the national association concerned to implement the threat.*
3. *If points are deducted, they shall be proportionate to the amount owed.*
4. *A ban on any football related activity may also be imposed against natural persons [...]."*

Article 16 [“Fine”]:

1. *A fine is issued in Swiss francs (CHF) or in US dollars (USD). It shall be paid in the same currency.*
2. *The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than 1,000,000.*
3. *The body that pronounces the sanction decides the terms and time limits for payment. If the fine is added to a match suspension, it shall be paid before the suspension has ended.*
4. *Associations are jointly liable for fines imposed on representative team players and officials. The same applies to clubs in respect of their players and officials. The fact that a natural person has left a club or association does not cancel out joint liability”.*

The Merits of the Dispute

9. The Appellant challenges the DC Decision to sanction its failure to comply with the PSC Decision, which imposed on the Club the obligation to pay a given amount of money (USD 373,226) to the Brazilian Club. Having failed to pay within the deadline specified in the PSC Decision, the Appellant was sanctioned by the Respondent pursuant to Article 68 FDC.
10. In support of its request to have the sanction cancelled and to obtain a new decision reducing and dividing in several instalments its debt to the Brazilian Club, the Appellant invokes four main reasons:
 - i. *the PSC and the DC failed to consider that a portion, corresponding to EUR 10,000, had been paid by the Club to the Brazilian Club on 4 October 2004, and therefore the Club could not be considered to owe the Brazilian Club the entire amount awarded by the PSC;*
 - ii. *FIFA failed to consider the request of the Club to be allowed to settle its debt to the Brazilian Club in several instalments;*
 - iii. *the Club’s difficult financial and sporting situation;*
 - iv. *the inapplicability of Article 68 FDC, whose conditions would not be met, because the Appellant cannot be considered as debtor of the full amount.*
11. In other words, the Appellant makes submissions with regard (a) to the debt to the Brazilian Club, that assumes not to correspond to the sum awarded by the PSC Decision, and wishes to settle in instalments, consistent with its current financial and sporting situation, and (b) to Article 68 FDC, which it submits was not properly applied.
12. With respect to the Appellant’s submissions, the Panel wishes to underline two preliminary important points.
13. First, the Panel notes that it is undisputed that the PSC Decision has become final and binding on the Club. According to the FIFA rules (Article 60.1 of the FIFA Statutes), the PSC Decision could be challenged before the CAS: any and all reasons for an appeal to be brought

against the PSC Decision had to be set forth in a request to the CAS under the applicable rules in a time limit starting from the notification of the PSC Decision. At the same time, the Panel notes that indeed an appeal was brought by the Club against the PSC Decision but that such appeal was considered as withdrawn, and the proceedings terminated, pursuant to Article R64.2 of the Code. As a result of the above, the PSC Decision is final and binding on the Club.

14. Second, the Panel underlines that the object of this appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the DC. As a result, only submissions relating to the fine imposed by the DC, such as its legal basis and quantum, can be heard. The Panel cannot consider requests concerning the debt owed by the Appellant to the Brazilian Club, the issues relating thereto having been decided by the PSC Decision, which is final and binding. Any request by the Appellant to have its debt towards by the Brazilian Club cancelled, reduced, postponed, rescheduled, or divided in several deferred portions, is precluded: it cannot be re-heard now, within the framework of a procedure opposing the Appellant and FIFA, at the stage of enforcement of the obligation to pay; it can only be discussed, if the case, by the Club with the Brazilian Club.
15. In the light of the above, the Panel finds that the reasons invoked by the Appellant concerning the debt to the Brazilian Club are untenable as grounds of appeal.
16. In addition, as to the requests of deduction of USD 10,000 out of the debt to the Brazilian Club, and of payment in instalments, the Panel notes that it was not for the DC to provide on them, the only task of the DC being that of controlling whether the Club had complied with the final and binding PSC Decision. The DC Decision that rejected the Club's submissions in this respect can therefore be approved.
17. As a result, the Panel concludes that the conditions for a fine to be imposed on the Club, which breached its duty to make timely payment of the PSC Decision, and to settle its debt to the Brazilian Club, have been met. Moreover, the amount of the fine appears to be proportionate.
18. As to the first aspect, the Panel confirms that Article 68 FDC allows a sanction to be imposed on a club that has failed to pay entirely its debts to another subject. The provision is intended to confirm that it is a disciplinary duty of clubs to fully comply with the decisions of the bodies of FIFA; and a partial payment would not amount to a full compliance with the decision of the body of FIFA. In this respect, the Panel endorses the FIFA's position that a different interpretation would be inconsistent not only with the text of the rule, but also with its aim. As made clear by the French text of Article 68 FDC, which is prevailing on any other version pursuant to Article 151 FDC, also a partial payment, i.e. a payment not in full, of a debt opens the way to disciplinary sanctions ("La personne qui ne paie pas ou pas entièrement ... sera sanctionnée ..."). In addition, it would be odd to admit that even a small payment – out of a large debt – allows a debtor to escape the disciplinary responsibility: the effectiveness of the system, and the binding force of the disciplinary principle underlying it, i.e., that the decisions of the FIFA bodies have to be fully complied with, would be seriously impaired.

19. At the same time, the Panel confirms that the difficult financial and sporting situation alleged by the Appellant is not a justification for its failure to pay its debt to the Brazilian Club. Lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment. The DC, therefore, rightly considered the Appellant in breach of its financial obligation to the Club, irrespective of the financial situation of the debtor.
20. As to the amount of the fine, the Panel confirms that the DC Decision is consistent with Articles 16 and 68 FDC: the amount of the fine, set at CHF 25,000 in a scale ranging from CHF 5,000, which is the minimum amount pursuant to Article 68 FDC, to CHF 1,000,000, which is the maximum amount pursuant to Article 16 FDC, does not seem to be oppressive, and appears to be justified by the attitude of the Club, which made no efforts to settle its debts after the PSC Decision had been rendered, and proportionate to the rather substantial amount owed to the Brazilian Club.

Conclusion

21. In light of the foregoing, the Panel dismisses the appeal brought by the Club; the DC Decision is confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Rayo Vallecano de Madrid SAD against the decision issued on 31 October 2005 by the FIFA Disciplinary Committee is dismissed.
2. The decision adopted on 31 October 2005 by the FIFA Disciplinary Committee is confirmed.
3. All other prayers for relief are dismissed.

(...)