



Arbitration CAS 2007/A/1298 Wigan Athletic FC v/ Heart of Midlothian & CAS 2007/A/1299 Heart of Midlothian v/ Webster & Wigan Athletic FC & CAS 2007/A/1300 Webster v/ Heart of Midlothian, order of 24 July 2007

Panel: Mr. Quentin Byrne-Sutton (Switzerland), President; Mr. Jean-Jacques Bertrand (France); Mr. Michael Beloff QC (United Kingdom)

Football

CAS jurisdiction

Scope of the arbitration clause

Scope of the exception to CAS jurisdiction in the FIFA Statutes

Notion of “sanction” and of “disciplinary measure”

- 1. The existence of a single written decision by a body of a federation does not, in itself, prevent such decision from covering a variety of measures and sanctions based on different provisions of the federation's regulations and having different purposes, which may or may not be subject to arbitration according to the scope of the applicable reference to arbitration.**
- 2. The exception provided by article 61 par. 3 (b) of the FIFA Statutes relates not only to sanctions for on-field offenses, but more generally to any measure whereby a football player is in effect prohibited from playing for a certain number of matches or period of time whatever the cause.**
- 3. The general notions of “sanction” and of “disciplinary measure” are logically difficult to distinguish and are not clearly distinguished in the FIFA Regulations themselves.**

Considering that articles 61 par. 1 and 61 par. 3 of the FIFA Statutes respectively provide:

Art. 61 par. 1

“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.”

Art. 61 par. 3

“CAS, however, does not deal with appeals, arising from:

(a) violations of the Laws of the Game;

(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made”;

Considering that in reliance on article 61 par. 3 of the FIFA Statutes, Heart of Midlothian plc (“Hearts”) deems that CAS lacks jurisdiction to review the disciplinary measure (two-week non eligibility of Andrew Webster) decided by FIFA in its decision of 4 April 2007 (the “DRC decision”);

Considering that Andrew Webster (the “Player”) deems the CAS has jurisdiction because “... *art. 61 of the FIFA statutes deal with suspensions as in this case the ineligibility to play is a measure and not a sanction*”;

Considering that Wigan AFC Limited (“Wigan”) deems that CAS has jurisdiction notably because article 61 par. 3 of the FIFA Statutes can only have been intended to address “... *minor sanctions, generally awarded on a pre-determined tariff basis, for on-field disciplinary offences*” and because the non-eligibility measure cannot be “carved out” of the DRC's decision of 4 April 2007, which as a whole is clearly subject to appeal;

Considering that in deciding on this issue, the Panel needs to determine the scope of jurisdiction given to CAS under the arbitration clause constituted by art. 61 of the FIFA Statutes, i.e. whether or not the reference to CAS in article 61 par. 1 covers the type of two-week non-eligibility disciplinary measure decided by FIFA on the basis of article 17 par. 3 of the FIFA Regulations for the Status and Transfer of Players (the “FIFA Regulations”) or whether such measure is excluded from arbitration under the terms of article 61 par. 3;

Considering that the existence of a single written decision by FIFA does not, in itself, prevent such decision covering a variety of measures and sanctions based on different provisions of the FIFA Regulations and having different purposes, which may or may not be subject to arbitration according to the scope of the applicable reference to arbitration;

Considering furthermore that in the present case the compensation for termination decided by the DRC on the basis of article 17 par. 1 of the FIFA Regulations, on the one hand, and its decision to impose a disciplinary measure on the basis of article 17 par. 3 due to the Player's alleged delay in providing notice of termination, on the other hand, are not not inextricably linked;

Considering therefore that the key issue in this case is whether the type of disciplinary measure imposed by the DRC can be deemed to fall within the exclusion provided by article 61 par. 3 (b) of the FIFA Statutes, whereby CAS lacks jurisdiction to deal with appeals arising from “*suspensions of up to four matches or up to three months (with the exception of doping decisions)*”;

Considering that the exact scope of the exception might be deemed unclear if one relied on the wording of article 61 par. 3 (b) alone, notably because there could be uncertainty as to what is meant

by the word “suspension” and whether it relates only to sanctions for on-field offenses or more generally to any measure whereby a football player is in effect prohibited from playing for a certain number of matches or period of time whatever the cause;

Considering however that this question of semantics is resolved by article 55 of the FIFA Statutes wherein “Disciplinary measures” are expressly defined as covering, inter alia, “a match suspension” (article 55 par. 2 (b));

Considering furthermore that the general notions of “sanction” and of “disciplinary measure” are logically difficult to distinguish and are not clearly distinguished in the FIFA Regulations themselves since article 17 par. 3 uses the term “sporting sanction” when non-eligibility is tied to a breach of contract within the Protected Period and the term “disciplinary measure” is employed when non-eligibility stems from a breach of contract outside the Protected Period, i.e. despite neither situations concerning on-field offenses;

Considering finally that the purpose of article 61 par. 3 (b) would appear to be for FIFA to prevent multiple appeals against more minor suspensions whatever their cause and regulatory basis, since an exception to the exclusion is expressly provided for only one category of suspension, i.e. suspensions in doping decisions;

The Court of Arbitration for Sport rules:

1. CAS has no jurisdiction to entertain an appeal against that part of FIFA's decision of 4 April 2007 imposing two-weeks of ineligibility on the player Andrew Webster as a disciplinary measure.

(...)