



Arbitration CAS 2008/A/1590 Danny Vukovic v. Fédération Internationale de Football Association (FIFA), award of 12 July 2008

Panel: Mr Efraim Barak (Israel); Mr Mark Hovell (United Kingdom); Mr Michele Bernasconi (Switzerland)

Football

Misconduct of a player against match officials

Condition for the interruption of a sanction

Interpretation of a provision

1. **According to the existing rules, the sole possible suspension of a sanction has to be linked with a probationary period or with the rest periods. When the sole objective of the suspension of a sanction is to enable a player to participate to the next Olympic Games, the sanction appears as being tailor-made for the player. As such, the interruption of the sanction has no legal basis.**
2. **The “prohibition” for the Chairman of the FIFA Appeal Committee to review the merits of a national decision aims at preventing that a procedure of enforcement of a decision by extending its effects world-wide, may be used to review the whole merits of a single case. However, this limitation of the powers of the Chairman of the FIFA Appeal Committee cannot lead to a situation where FIFA is requested to enforce a national decision in a manner which is blatantly in violation of FIFA Statutes and FIFA rules.**

The Appellant is Mr Danny Vukovic (“the Appellant” or “the player”), a football player, a goalkeeper, who plays for the Central Coast Mariners in the A-League of the Australian Football Championship.

The Respondent is the Fédération Internationale de Football Association (FIFA; “the Respondent”) is an association formed under the laws of Switzerland with headquarters in Zurich, also recognised by the International Olympic Committee (IOC) as the international federation governing the sport of football worldwide.

In the match Central Coast Mariners vs. Newcastle Jets on 24 February 2008, the Appellant was sent off. The referee reported that *“the player deliberately struck my forearm in an aggressive manner and then ran off back towards his penalty area”*.

On 25 February 2008, the Independent Match Review Panel of the A-League sanctioned Danny Vukovic with:

- a. a suspension from football of nine months, from 25 February to 24 November 2008;
- b. an automatic suspension from football of six months should the player commit an R2 offence in the period from 25 November 2008 to 24 November 2009.

Danny Vukovic lodged an appeal against the decision of the Independent Match Review Panel of the A-League to the Disciplinary Committee of the Australian Football Federation.

On 4 March 2008, the Disciplinary Committee of the Australian Football Federation (FFA) imposed on the player a suspension for 12 months of which

- a. nine months would be served with immediate effect and conclude on 24 November 2008 and;
- b. three months would be suspended and be automatically served in the event the player is found to have committed any of a number of specified offences against match officials.

The player lodged an appeal with the Appeal Committee of the Australian Football Federation.

On 23 April 2008, the Appeal Committee of the Australian Football Federation determined:

- a. Mr Vukovic be suspended from all games up to 24 June 2008 (the suspension having effect from 25 February);
- b. Mr Vukovic be suspended from all games from 29 August to 5 October 2008 inclusive;
- c. Mr Vukovic is not to play in any games from 6 October 2008 to 25 January 2009 inclusive (including Rounds 8-21 of the Hyundai A-League) with such penalty to be suspended. The trigger for lifting the suspension of this part of the penalty is anything at any time up to 25 January 2009 involving an infringement falling within these categories in regulation 17.5 of the National Disciplinary Regulations: (4), (6) and (9) (codes R4, R6 and R9);
- d. Payment of a fine to FFA in the amount of AUD 10'000.

On 5 May 2008, FIFA received the case file, sent by the FFA, pertaining to the disciplinary proceedings against the player. The FFA asked FIFA to extend the sanction imposed to have worldwide effect in accordance with article 143 of the FIFA Disciplinary Code.

On 23 May 2008, the Chairman of the FIFA Disciplinary Committee noted that the legal conditions for this case to be heard were satisfied and decided that the player is suspended on international level from 25 February 2008 until 25 January 2009. In addition to the above, it was also decided that the part of the player's suspension from 6 October 2008 to 25 January 2009 is suspended on international level and will be implemented only under the conditions defined in the FFA Appeal Committee's decision dated 23 April 2008.

On 19 June 2008 the player lodged an appeal with the Chairman of the FIFA Appeal Committee.

On 25 June 2008, the Chairman of the FIFA Appeal Committee rejected the appeal and confirmed the decision of the Chairman of the FIFA Disciplinary Committee.

On 27 June 2008, the Appellant lodged a combined statement of appeal and appeal brief before the Court of Arbitration for Sport (CAS). The Appellant asked for an expedited procedure.

The Respondent agreed with the expedited procedure.

On 2 July 2008, the Respondent filed its answer brief.

No hearing was held as both parties confirmed their preference for the Panel to issue an award solely on the basis of the written submissions.

The player seeks that the decision of the FIFA Appeal Committee be set aside and that in lieu thereof the request of the FFA that the sanction imposed on the player by the FFA's Appeal Committee dated 23 April 2008 be extended to have worldwide effect be granted in terms of the sanction imposed by the said FFA Committee.

According to the player, the Chairman of the FIFA Appeal Committee was in breach of Article 146 par. 1 and 2 of the FIFA Disciplinary Code (the "FDC") namely, he purported to review the substance of the FFA Appeal Committee's decision and never granted or refused to grant the actual request to have the sanction extended. In its decision, the Chairman purported to extend a sanction which FFA's Appeal Committee had not imposed and which FFA had not requested FIFA to extend, namely a suspension of the player from and including 25 June 2008 to 28 August 2008 at an international level.

In exercising the powers of the FDC, the Chairman, misconstrued the provisions of Articles 143 ff of the FDC as his only power was either to grant or refuse FFA's request to have the sanction imposed by its Appeal Committee extended so have worldwide effect.

According to the Respondent, the decision of the FFA Appeal Committee was not changed in its substance at national level, the decision was not set aside. The decision was extended in accordance with the applicable regulations because the conditions for such extension were met. The relevant decision keeps its effect at national level, as defined in the decision that is hereby appealed against.

The Chairman of the FIFA Appeal Committee only interpreted the *ratio* behind the decision for the purpose of the international level. Hence, based on the *telos* of the rules governing the extension of the suspension of the Appellant at international level from 25 February 2008 until 25 January 2009 without the interruption established in the decision reached by the Appeal Committee of the FFA, the Chairman deemed such extension to be in compliance with such a *telos*.

Consequently, the FIFA requests the CAS to reject the appeal and confirm the decision reached by the Chairman of the FIFA Appeal Committee on 25 June 2008.

LAW

Jurisdiction and Applicable Law

1. The competence of the CAS to act as an appeal body in this dispute is based on Article R47 of the Code of Sports-related Arbitration (“the Code”) which provides that:
“A party may appeal from the decision of a federation, association of sports body, 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 body”.
2. Article 61 of the FIFA Statutes provides:
“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations Members of Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.
3. In their written submissions and in the order of procedure they have signed, each parties accepted CAS’ jurisdiction.
4. It follows that the CAS has jurisdiction to decide the present dispute.
5. According to Article R58 of the Code:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in 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. The Panel notes that the parties both refer to the FIFA Disciplinary Code and the FIFA Statutes. The Panel also notes that FIFA Statute 60.2 provides for the application by the CAS of “the various regulations of FIFA and, additionally, Swiss law”.
7. As a result, the Panel holds that the present dispute must be decided applying primarily the FDC and the FIFA Statutes and, complementarily, Swiss law and general principles of law.

The FIFA Disciplinary Code

8. Indeed, a first impression when reading the FDC in light of the matter at stake, may lead to an easy, however to some extent misleading conclusion, according to which the crucial

provisions for the resolution of the dispute are Article 143 – 147 of the FDC. These provisions read as follows:

“Extending sanctions to have worldwide effect

Art. 143 Request

1. *If the infringement is serious, in particular doping, corruption, manipulation of match results, misconduct against match officials or violation of the rules governing age limits, the associations, confederations, and other organizing sports bodies shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.*
2. *(...).*
3. *If the judicial bodies of FIFA discover that associations, confederations and other sports organization have not requested a decision to be extended to have worldwide effect, even though it should have been, these bodies may themselves pass a decision.*

Art. 144 Conditions

The request for sanctions to be extended will be approved if:

- a) *the person sanctioned has been cited properly;*
- b) *he has had the opportunity to state his case;*
- c) *the decision has been communicated properly;*
- d) *the decision complies with the regulations of FIFA;*
- e) *extending the sanction does not conflict with public order and accepted standards of behavior.*

Art. 145 Procedure

(...).

Art. 146 Decision

1. *The chairman is restricted to ascertaining that the conditions of art. 144 have been fulfilled. He may not review the substance of the decision.*
2. *He either grants or refuses to grant the request to have the sanction extended.*

Art. 147 Effect

1. *The sanction passed by the association or confederation requesting it to be extended has the same effect in each member association of FIFA as if the sanction had been passed by any one of them”.*
9. That is why the Appellant referred in the combined statement of appeal and appeal brief mostly to these articles, disregarding other articles of the FDC and main principles of the FIFA statutes.

10. Art. 2 (e) of the FIFA Statutes reads as follows:

“The objectives of FIFA are:

(...)

(e) to prevent all methods or practices which might jeopardize the integrity of matches or competitions or give rise to abuse of Association Football”.

(ndlr: Association Football being the game controlled by FIFA and organized in accordance with the Laws of the Game).

11. Concerning the sanction for misconduct against match official, the FDC provides:

“Art. 49 Misconduct against match official

Including the automatic suspension incurred in accordance with art. 18 par. 4, the overall suspension imposed on any person receiving a direct red card shall be for:

a) (...).

b) at least six months for assaulting (elbowing, punching, kicking etc.) a match official.

(...).”

12. In relation to the scope and duration of sanctions, the FDC provides:

“Art 19 Match Suspension

1. (...)

2. The suspension is imposed in terms of matches, days or months. Unless otherwise specified, it may not exceed twenty-four matches or twenty four months”.

“Art. 34 Time sanctions: calculation of time limit

The duration of a time sanction can be interrupted by rest periods during or between seasons”.

13. The combination and overall meaning of these articles could lead anyone, including of course the national associations, to the understanding that the period of a suspension must be continuous and not interrupted, while the only legitimate interruption accepted by the FDC is a specific interruption during rest periods. This interruption is in line with the aim and goal of a punitive suspension and gives full effect to the suspension period, inter alia by preventing the suspended player to benefit from rest periods during or between seasons.

14. In relation to procedural issues, the FDC provides:

“Art. 77 General rule

The judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organizations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law”.

Merits

15. According Art. 143 ff. FDC, once a serious infringement occurs, the association concerned passes a decision on the national level and then requests FIFA to extend the decision on the international level.
16. According to Art. 146 of the FDC, FIFA can either refuse or grant the request. It has no power to review the decision. When no such request to extend the decision on the international level is made by the association, FIFA may pass itself “a decision” (Art. 143.3 FDC). However, and additionally, FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA, if an association fails to prosecute in compliance with fundamental principles of law (Art. 77 FDC).
17. The Panel notes that these regulations appear somehow as contradictory. On one hand, in given circumstances, FIFA has no power to review the decision. On the other hand, if the decision at stake concerns a serious infringement and violates fundamental principles of law, FIFA may interfere and issue a sanction.
18. In the case at hand, the national association issued a decision having direct impact on an international issue: whether the player is able to participate in the next Olympic Games. The FFA Appeal Committee held:

“The one qualification concerns the question of whether the penalty was excessive in light of the likely consequences of Mr Vukovic missing the Beijing Olympics.

In the course of the hearing of the appeal, it was contended on Mr Vukovic’s behalf that playing in the Olympics provides a unique opportunity for a young player to show his talent on the world stage, and that it could result in very valuable opportunities to play for overseas clubs in the future. The evidence supports this proposition. A penalty which resulted in Mr Vukovic missing the Olympics could possibly lead to great financial loss for him in the future. We accept that this is the case.

In our opinion, it is a cardinal principle of justice that the punishment fit the offence. We believe that despite the seriousness of Mr Vukovic’s infringements, a sanction which has the effect of excluding him from the Olympic Games is manifestly excessive, particularly in view of the range of possible sanctions”.
19. For these reasons, The FFA Appeal Committee decided an interruption of the sanction between 24 June 2008 and 29 August 2008.
20. The Panel is well aware of the allegations of the Appellant in its attempt to convince that in the FFA decision there is no interruption in the suspension period, but two different suspension periods. This argumentation however is not acceptable for Panel.
21. First, although literally the situation may indeed be described in the way suggested by the Appellant, one should consider the meaning of the decision and the arguments clearly stated in the decision itself: Indeed, it was explained that the decision was taken in a way as to interrupt the suspension period in order to allow the player to participate in the Olympic

Games. This is the reason why “the first suspension” ends just before the opening of the Olympic Games, and “the second suspension” starts immediately after the termination of the Olympic Games. The attempt to use (or to abuse) the wording and a possible literally meaning as an instrument for avoiding or by-passing the principles and the aims of the suspension is, in the Panels' view, unacceptable.

22. Therefore and contrary to what the FFA Appeal Committee decided, FIFA issued its own decision that prevented the player to participate to the Beijing Olympic Games, by extending the sanction for the same period as decided by the FFA bodies but without granting a suspension in-between.
23. According to the FFA rules, only one type of suspension is possible and is provided for at Art. 12.6 of the FFA's Grievance Resolution Regulations:
“The implementation of a sanction may be suspended and, if so, the person sanctioned is subject to a probationary period”.
24. FIFA's FDC provides for a similar rule at Art. 33.4:
“By suspending implementation of the sanction, the body subjects the person sanctioned to a probationary period of anything from six months to two years”.
25. The Panel is of the opinion that the sole possible suspension has to be linked with a probationary period or with the rest periods (*supra*). As mentioned, no reference is made in the FFA decision on which legal basis, be it of the FFA Statutes or of the FFA Grievance Resolution Regulations (version dated 1st January 2007 available on FFA's website) such interruption could be granted.
26. In the case at hand, the suspension of the sanction for a period in-between cannot be considered as a probationary period. The sole objective is to enable the player to participate to the next Olympic Games. As such, the interruption of the sanction has no legal basis. The sanction appears to the Panel as being tailor-made for the player. Nor it is argued by the FFA bodies that based on the sole principle of proportionality it shall be possible (without any explicit legal basis to do so) to sanction a player with a long-term suspension but at the same time allowing him to participate in an international event by suspending in-between the sanction.
27. Therefore, the decision issued by the FFA Appeals Committee appears to the Panel as violating a fundamental principle of law.
28. Further, one shall note that according to Art. 77.2 FDC, FIFA could have issued its own decision. In refusing to implement the interruption from 24 June 2008 and 29 August 2008, one could argue that FIFA actually did so.
29. The Panel is of the opinion that the rule of Art. 146 FDC, that restricts a review of the substance of the decision to be extended, has to be interpreted in accordance with the rationale of the mechanism of world-wide extension of a domestic sanction and also in

accordance with the general rule provided for at Art. 77.2 FDC giving to FIFA the right to issue decisions under certain circumstances.

30. The “prohibition” for the Chairman of the FIFA Appeal Committee to review the merits of a national decision aims at preventing that a procedure of enforcement of a decision by extending its effects world-wide, may be used to review the whole merits of a single case. However, this limitation of the powers of the Chairman of the FIFA Appeal Committee cannot lead to a situation where FIFA is requested to enforce a national decision in a manner which is blatantly in violation of FIFA Statutes and FIFA rules.
31. Upon careful review of all evidence submitted to the Panel, as mentioned above, the Panel is of the opinion that under applicable FIFA regulations, a suspension of a player cannot be lifted for an interim period in-between, to simply allow a player to participate in a certain competition. A “conditional” (probationary) suspension of a sanction is possible, but only at the end of the sanction period.
32. Accordingly, taking into due consideration the rationale of the procedure of worldwide extensions of sanctions, the Panel is of the view that FIFA did act in accordance with the applicable FIFA rules and in particular with the FDC, by accepting the substance of the sanction, i.e. in particular its duration, and simply refusing to grant a suspension in-between, based on the rather questionable wish to allow a player to nevertheless participate in an important international event.
33. The Panel shall therefore confirm the decision of the Chairman of the FIFA Appeal Committee date 25 June 2008 and dismiss the appeal.
34. This opinion is also supported by Art. 151.2 of the FDC. To the extent that the question of the possibility to impose a non-continuous suspension period in circumstances other than those mentioned above is also to be considered in the case at stake, due to the fact the wording of the FDC does not precisely mention this matter. The Panel wishes to state clearly that this situation should be considered as an omission in the code.
35. Art. 151.2 of the FDC reads as follows:
“If there are any omissions in this code, the judicial bodies will decide in accordance with the association's custom, or, in the absence of custom' in accordance with the rules they would lay down if they were acting as legislators”.
36. Therefore, even if considering this situation as an omission in the FDC, the decision of this Panel should be made in accordance with the rules the Panel would lay down if the Panel was acting as legislators. Those rules are the ones previously explained in this award, and this leads to the same outcome and supports the result: the FDC cannot be used as a legal basis to prevent FIFA to extend national sanctions in a harmonized way, in accordance with the applicable rules, without “tailor-made” solutions aiming at a player to serve his/her sanction over a sequence of limited period of times, picking out the most appropriate weeks, and giving to the player and his/her team the possibility to circumvent the effects of a meaningful

world-wide extension of a sanction. While it may be true that such an explicit rule is missing in the FDC, it would not be an acceptable interpretation of the FIFA Statutes and the FIFA regulations to admit anything to the contrary. It remains to note, however, that FIFA would be well advised to address specifically and clarify such matters in its regulations, so that no more potential misunderstandings or abuses are possible.

37. The Panel shall therefore confirm the decision of the Chairman of the FIFA Appeal Committee date 25 June 2008 and dismiss the appeal.
38. Against the above background, all other prayers for relief are dismissed.

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr Danny Vukovic at the Court of Arbitration for Sport on 28 June 2008, against the Fédération Internationale de Football Association (FIFA), is dismissed.
2. The decision of the Chairman of the FIFA Appeal Committee dated 25 June 2008 is confirmed.
3. (...).
4. (...).
5. All other prayers for relief are dismissed.