



Arbitration CAS 2005/A/876 M. v. Chelsea Football Club, award of 15 December 2005

Panel: Mr Dirk-Reiner Martens (Germany); President; Mr Michele Bernasconi (Switzerland); Mr Raj Parker (United Kingdom)

Football

Employment contract between a player and a club

Admitted use of cocaine

Unilateral breach of contract without just cause

There is no basis in the wording of the FIFA Regulations for a distinction between a player unlawfully walking out under a contract and another player who breaches his contract through other serious misconduct, like the player's taking cocaine or committing a serious on or off the pitch offence which goes to the roots of his contract with his employer. The Player's admitted use of cocaine constitutes the "unilateral breach without just cause" provided by the FIFA Regulations and triggers the consequences deriving thereof, no matter whether this breach causes the Club to give notice of termination or whether the Club continues to hold on to and insist upon performance of the contract despite the Player's breach.

This is an appeal against a decision of the Football Association Premier League Appeals Committee (FAPLAC).

In 2003, M. (the "Appellant" or the "Player"), a Romanian national and a professional football player, and Chelsea Football Club (the "Respondent" or the "Club"), a member of the English Premier League, entered into a player contract which was scheduled to run until 2008. The Player admitted to having taken cocaine in the course of the year 2004. The FAPLAC determined that this constituted gross misconduct pursuant to the player contract and to entitle the Club to treat the contract as at an end. The FAPLAC further decided that the Club was therefore entitled to proceed to seek compensation and sporting sanctions from the FIFA Dispute Resolution Chamber (DRC).

In August 2003 the Player (who was born on 8 January 1979) entered into a 5-year player contract (the "Player Contract") with the Club which contract was to have run until 30 June 2008.

For the release of the Player the Club paid a compensation in the amount of EUR 22,500,000 to the Player's previous club.

Under the terms of the Player Contract the Player was entitled to an annual salary of GBP 2,350,000, namely GBP 45,000 per week.

The Player played 36 games and scored 10 goals for the Club in the 2003/4 season.

During the period from May to September 2004 the Player took cocaine on at least four or five occasions.

On 11 October 2004 the Player was informed that the A-sample of a drug test taken from him was positive. The test had been carried out by the English Football Association (FA) on 1 October 2004.

In a letter to the English FA dated 17 October 2004 the Player admitted to having taken cocaine and waived his right to have his B-sample analysed.

By a letter dated 28 October 2004 the Club informed the Player that the Player Contract was terminated for gross misconduct pursuant to clause 10.1.1.

On 4 November 2004 the FA Disciplinary Commission confirmed the positive result of the Player's drug test and suspended him until 18 May 2005. Further, the FA Disciplinary Commission imposed a GBP 20,000 fine on the Player. The decision was communicated to the Player on 4 November 2004.

On 12 November 2004 FIFA confirmed the FA Disciplinary Commission's decision mentioned at paragraph 11 above and adopted the Player's suspension to apply world-wide.

Article 42 Section 1(b)(i) of the FIFA Regulations for the Status and Transfer of Players which entered into force on 1 September 2001 (the "FIFA Regulations") provides:

"The triggering elements of the dispute (i.e. whether a contract was breached, with or without just cause, or sporting just cause) will be decided by the Dispute Resolution Chamber of the FIFA Players' Status Committee or, if the parties have expressed a preference in a written agreement, ..., by a national sports arbitration tribunal ..."

Accordingly, on 26 January 2005 the Club and the Player agreed that the FAPLAC would determine the dispute regarding "the triggering elements" under the FIFA Regulations.

On the basis of the facts outlined above the Club asked the FAPLAC

- for a determination that the Player's actions constituted gross misconduct under the Player Contract;
- that such gross misconduct was to be deemed a "unilateral breach without just cause or sporting just cause" within the meaning of Article 21(a), of the FIFA Regulations;
- that as a consequence of the Player's conduct the Club was entitled to treat the Player Contract as at an end;
- that the Club was entitled to bring a claim before the DRC for the imposition of sporting sanctions and/or for an award of damages to compensate the Club for its alleged loss.

In the proceedings before the FAPLAC the Player contended that the FIFA Regulations only applied in cases in which a Player “terminates” or “renounces” his contract, i.e. he wrongfully walks away from his contract in order to play for another club. As a consequence, according to the Player the FAPLAC and/or the DRC were not competent to make the determinations requested by the Club.

The Player also argued that he was not guilty of gross misconduct which would entitle the Club to terminate his Player Contract.

The FAPLAC rejected the Player’s arguments and accepted the Club’s submissions. According to the FAPLAC the application of Articles 21 seq. of the FIFA Regulations is not limited to instances where a Player wrongfully leaves a club for another nor are they confined to breaches of contract by the Player. Further, it is said,

“(T)here is no justification for suggesting that an innocent party can only seek a remedy from the DRC where the other party has “terminated” or “renounced” the contract”.

The FAPLAC also determined that in case of a serious breach of contract by the Player the Club had the option to either treat the Player Contract as at an end, or to insist on a continuation of the contract. In the event, the Club chose to accept the serious breach by the Player, and that acceptance of the Player’s breach brought the Contract to an end. This scenario, the FAPLAC concluded, clearly falls within the scope of application of Articles 21 seq. of the FIFA Regulations so that the Club is entitled to claim compensation.

So far as relevant the parties have made the following submissions:

- 1.- The Player mainly contends that Articles 21 seq. of the FIFA Regulations “*are designed to regulate moves of players between clubs and to distinguish those moves that are effected consensually between the club from which the player moves and the player himself*”.
- The Player further argues that
“in the case of an alleged unilateral breach of contract by a player, on their true constructions, articles 21 to 23 inclusive of the FIFA Regulations are intended only to be applicable to a situation in which the player undermines the stability of his contract of employment with the club by unilaterally terminating such contract without just cause or sporting just cause (by, for example, leaving his club during the currency of that contract in order to play for a new club)”.
- The Player seeks to support his arguments by interpreting a number of rules in the FIFA Regulations and the FIFA Circular no. 769 of 24 August 2001.
- According to the Player, a “unilateral breach” pursuant to Article 21 of the FIFA Regulations has to be equated with an “unlawful termination” of the Contract, and it was the Club, not the Player, that terminated the Player’s Contract. Therefore, it is said, the Player did not commit a unilateral breach of contract of the kind contemplated by, and falling within the relevant articles of the FIFA Regulations.
- 2.- The Club argues that there is no basis in the wording of the FIFA Regulations, in the intent behind the Regulations, or in principle to seek to draw a distinction between

different types of conduct by the Player which under the applicable law, namely English law in this case, have the same legal consequence of entitling the innocent party to treat the contract as discharged. In both instances, it is the Player who “renounces” the contract, and the Player’s conduct constitutes the “unilateral breach” required for the application for the FIFA Regulations.

- The Club further contends that there is no CAS decision which would support an interpretation of the applicable FIFA Regulations to the effect that only a walk-out by the Player under his contract would fall under these Regulations.

On 21 July 2005, the CAS Court Office issued, on behalf of the Chairman of the Panel, an order of procedure, which confirmed amongst other that CAS had jurisdiction to rule on this matter.

A hearing in this matter was held on 24 October 2005.

LAW

CAS Jurisdiction

1. The Parties took no issue with the jurisdiction of CAS. CAS jurisdiction is further confirmed by the Order of Procedure which was duly signed by both parties.
2. It follows that CAS has jurisdiction to decide the present dispute.
3. According to Article 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.

Applicable Law

4. Article R58 of the Code provides 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”.
5. Article 59 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.

6. In casu, the Player Contract expressly provides that it is governed by English law.
7. In addition, the FIFA Regulations and in particular their interpretation is governed by Swiss law.
8. It follows that this matter shall be decided in accordance with FIFA Regulations and with English law, while the implementation and interpretation of the FIFA Regulations shall be subject to Swiss law.
9. The FIFA rules and regulations which are relevant to the decision of this case are as follows:

“Chapter VIII.

Maintenance of Contractual Stability

Art. 21

- 1 (a) *In the case of all contracts signed up to the player’s 28th birthday: if there is unilateral breach without just cause or sporting just cause during the first 3 years, sports sanctions shall be applied and compensation payable.*
- (b) *In the case of contracts signed after the 28th birthday, the same principles shall apply but only during the first 2 years.*
- (c) *In the cases cited in the preceding two paragraphs, unilateral breach of contract without just cause is prohibited during the season.*
- 2 (a) *Unilateral breach without just cause or sporting just cause after the first 3 years or 2 years respectively will not result in sanctions. However, sports sanctions may be pronounced on a club and/or a players’ agent for inducing a breach of contract. Compensation shall be payable.*
- (b) *A breach of contract as defined in the preceding paragraph is prohibited during the season.*
- (c) *Disciplinary measures may be applied by the Dispute Resolution Chamber if notice is not given in the 15 days following the last official match of the national season of the club with which the player is registered.*

Art. 23

Other than in exceptional circumstances, sports sanctions for unilateral breach of contract without just cause or sporting just cause shall be applied:

- 1 *In the case of the player:*
 - (a) *If the breach occurs at the end of the first or the second year of contract, the sanction shall be a restriction of four months on his eligibility to participate in any official football matches as from the beginning of the new season of the new club’s national championship.*
 - (b) *If the breach occurs at the end of the third year of the contract (or at the end of the second year if the contract was signed after the age of 28), no sports sanction shall be applied unless there was failure to give appropriate notice after the last match of the season. In such a case the sanction shall be proportionate.*
 - (c) *In the case of aggravating circumstances, such as failure to give notice or recurrent breach of contract, sports sanctions may be imposed for up to a maximum of six months.*

- 2 *In the case of the club breaching a contract or inducing such a breach:*
- (a) *If the breach occurs at the end of the first or second year of the contract, the sanction shall be a ban on registering any new player, either nationally or internationally, until the expiry of the second transfer period following the date on which the breach became effective. In all cases, no restriction for unilateral breach of contract shall exceed a period of 12 months following the breach or inducement of the breach.*
 - (b) *If the breach occurs at the end of the third year of the contract (or at the end of the second year if the contract was signed after the age of 28), no sanctions shall be applied unless there was failure to give appropriate notice after the last match of the season. In such a case the sanction shall be proportionate.*
 - (c) *A club seeking to register a player who has unilaterally breached a contract during the periods defined in Art. 21.1 will be presumed to have induced a breach of contract.*
 - (d) *Without prejudice to the foregoing rules, other sports sanctions may be imposed by the FIFA Disciplinary Committee on clubs, where appropriate, and may include, but shall not be limited to, the following:*
 - *fines,*
 - *deduction of points,*
 - *exclusion from competitions.*

Appeals against such sanctions may be lodged to the Arbitration Tribunal for Football (TAF).

- 3 *In the case of a players' agent involved in such a breach:*
- Sanctions can also be imposed by the FIFA Players Status Committee on players' agents involved in a breach of contract, in compliance with the FIFA Players' Agents Regulations. Appeals against such sanctions may be lodged to the Arbitration Tribunal for Football (TAF).*

The Issue

10. The Player no longer denies that his taking cocaine was gross misconduct under his contract with the Club and amounted to a unilateral breach without just cause or sporting just cause for purposes of the FIFA Regulations.
11. Under the heading "Maintenance of Contractual Stability" Article 21 of the FIFA Regulations provides the following:
- "1. (a) In the case of all contracts signed up to the Player's 28th birthday: if there is unilateral breach without just cause or sporting just cause during the first 3 years, sports sanctions shall be applied and compensation payable".*
12. Two of the requirements of this Article are met in the case in hand:
- The Player Contract was signed before the Player's 28th birthday and the incident which gave rise to this arbitration happened during the Player's first three years of his contract with the Club.

13. In Chapter XIV “Dispute Resolution, Disciplinary and Arbitration System” Article 42, sec. 1 (b) (i) of the FIFA Regulations says the following:
“The triggering elements of the dispute (i.e. whether a contract was breached, with or without just cause or sporting just cause), will be decided by the Dispute Resolution Chamber of the FIFA Players’ Status Committee or, if the parties have expressed a preference in a written agreement, or it is provided for by collective bargain agreement, by a national sports arbitration tribunal composed of members chosen in equal numbers by players and clubs, as well as an independent chairman. This part of the dispute must be decided within 30 days after the date on which the dispute has been submitted to the parties’ tribunal of choice”.
14. While both parties agree that in principle a party who breaches a contract is liable to pay compensation to the innocent party for the damages caused by his breach, the Player argues that such a liability, while it may exist under civil law, does not arise out of Article 21 of the FIFA Regulations because this provision only applies in cases in which a player “terminates” or “renounces” his contract, i.e. wrongfully walks away from a contract, in order to play for another club and not in a situation where a club terminates a contract even if it does so “with just cause” as is the accepted case here.
15. By contrast, the Club contends that any breach of contract which is serious enough to destabilize the contractual relationship can give rise to a claim for compensation under the Regulations.
16. The only issue for this Panel to decide is whether the words “unilateral breach without just cause or sporting just cause” in Article 21 of the FIFA Regulations cover
 - *only cases in which a player “terminates” or “renounces” his contract, e.g. by walking out, as the Player contends, or*
 - *also apply to other serious misconduct by the player as is argued by the Club.*

The Analysis

A. Breach

17. The first issue to be resolved is whether the “breach” contemplated in Article 21 of the FIFA Regulations refers to the act or omission constituting a breach of contractual obligations, e.g. the use of cocaine, or whether, as the Player contends, the word “breach” in Article 21 of the FIFA Regulations is to be equated with an “unlawful termination” of the contract which is the result of the breach. If the Player’s interpretation was correct, an “unlawful termination” would not exist in this case because it was the Club, not the Player who gave lawful notice of termination of the Player Contract.
18. The Panel is of the view that the text of and intent behind the relevant rule does not lend itself to any other interpretation than the one used in the contested decision and advanced in these proceedings by the Club, i.e. that it is the “unilateral breach” itself which gives rise to claims under the Regulations. In other words, the Player’s admitted use of cocaine constitutes

the “unilateral breach without just cause” and triggers the consequences provided for in the Regulations, no matter whether this breach causes the Club to give notice of termination or whether the Club continues to hold on to and insist upon performance of the contract despite the Player’s breach.

19. First of all, the plain meaning of the word “breach” supports this interpretation. The wording of the FIFA Circular no. 769 relating to the “Revised FIFA Regulations for the Status and Transfer of Players”, actually differentiates between “termination of ... contracts” (sec. 3 “Contractual Stability”, page 10) and “a player who breaches his contract” (page 11) which demonstrates that the FIFA rule maker is very well capable of distinguishing a “breach” from a “termination”. Article 21 of the FIFA Regulations uses the word “breach” and this word has to be read as what it means unless there are cogent reasons to use an interpretation against the “literal meaning”. In the Panel’s view there are none in the present case.
20. It is true that with the above interpretation the word “unilateral” in Article 21 of the FIFA Regulations adds little, if anything, to the meaning of the word “breach”. But in the Panel’s opinion “unilateral breach” has to be read as distinguishing the act of breaking a contract from ending it by agreement, and cannot be equated with “unlawful termination” as the Player urges us to do.
21. The Player lists a number of provisions in the FIFA Regulations which in his view support an interpretation contrary to the one advanced by the Club. The Panel disagrees:
 - Both the Title and the Preamble of the FIFA Regulations refer to the “Status” and the “Transfer” of players. The status of a player is affected by any kind of breach of the contractual relationship, no matter whether it happens in connection with a transfer or not.
 - As to transfer, it is true that Article 6, Section 5 of the FIFA Regulations deals with a contractual dispute in connection with a transfer but it does so within the context of “transfer certificates” (Chapter IV). By contrast, Chapter VIII deals with “Contractual Stability”.
 - Article 21, Section 2(a) of the FIFA Regulations also does not help the Player’s cause. It relates to an instance where the new club of a player induced a breach of contract, but this certainly does not mean that this is the subject matter of the entire Chapter VIII.
 - The same is true for Article 21, Section 2 of the FIFA Regulations which *inter alia* deals with the case of a “club ... inducing such a breach”. This cannot be read as being the only set of circumstances with which Chapter VIII is concerned.
 - Article 23, Section 1(a) and (c) of the FIFA Regulations does in fact relate to sporting sanctions and aggravating circumstances in connection with a transfer but, once again, this is only one of several scenarios in which contractual stability, the subject matter of Chapter VIII, is affected.

B. *Distinction between Different Types of Breach?*

22. Having decided that, as a matter of principle, it is the Player's misconduct which falls under Article 21 of the FIFA Regulations, the Panel has to decide whether there is any basis in the FIFA Regulations for the Player's proposed distinction between a player unlawfully walking out under a contract and another player who breaches his contract through other serious misconduct like the Player's taking cocaine or some other serious on or off the field offence which goes to the root of his contract with his employer, the Club. According to the Player, the former case qualifies as a triggering element for possible financial compensation (Articles 21 and 42 of the FIFA Regulations) while the latter does not.
23. The Panel does not accept this reasoning:
24. First of all, there is no basis for this distinction in the wording of the FIFA Regulations. There is also no logical reason for it. The Panel agrees with the Club that if the draftsmen had intended such an artificial distinction they would have spelled it out in clear terms. Why should a player who walks away from a contract without just cause be treated differently than one who undermines his team's performance by intentionally playing poorly or continually missing training?
25. Secondly, it is plain from the text of the FIFA Regulations that they are designed to further "contractual stability" and the latter is as much affected by a player's walk-out as by a player breaking the contract through other serious misconduct, e.g. by using substances forbidden in sport.
26. Thirdly, the Panel's reading of Article 21 of the FIFA Regulations is perfectly in line with FIFA's own interpretation of its rules as can be seen from the decisions of the DRC quoted by both parties.
27. Fourthly, the Panel finds support for its ruling in this matter in the decision CAS 2003/O/482, where the player was considered liable to pay damages to the club for having left the club without just reason.
28. Finally, the submissions on EU law raised by the Appellant do not arise for consideration unless and until the question of the enforcement of any compensation that may be awarded by the FIFA DRC falls to be determined by the CAS.

C. *Conclusion*

29. For the above reasons the Panel concludes that the appeal must be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by M. against the decision issued by the Football Association Premier League is dismissed.
2. (...).