



Arbitration CAS 2009/A/1909 RCD Mallorca SAD & A. v. Fédération Internationale de Football Association (FIFA) & UMM Salal SC, order of 18 August 2009

Football

Provisional measures

Application for a stay of the challenged decision

RCD Mallorca SAD (“Mallorca”) is a Spanish Football club existing under the laws of Spain and has its headquarters in Mallorca, Spain. Mallorca is affiliated to the Spanish Football Federation (“RFEF”) which in turn is a member of FIFA. As a result, Mallorca is subject to and bound by the applicable rules and regulations of FIFA.

A. (“the Player”) is a Guinean professional football player.

The Fédération Internationale de Football Association (FIFA) is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.

UMM Salal is a Qatar Football club existing under the laws of Qatar and has its headquarters in Doha, Qatar. UMM Salal is affiliated to the Qatar Football Federation (QFA) which in turn is a member of FIFA. As a result, UMM Salal is subject to and bound by the applicable rules and regulations of FIFA.

The Player concluded a contract with Mallorca dated 1 February 2008 (“the first contract”) valid from 1 July 2008 until 30 June 2013.

The Player concluded another contract (“the second contract” with UMM Salal, dated 17 March 2008 and valid from 1 July 2008 to 1 June 2010.

On 3 May 2008 the Player informed UMM Salal, by means of a termination letter that he was not in a position to comply with the second contract since he was obliged with his current club at the time (i.e. Al Ittihad, from Saudi Arabia). The Player requested the cancelation of the second contract.

On 25 August 2008 the RFEF requested to the Saudi Arabian Football Federation the ITC of the Player, which was finally issued after FIFA’s intervention.

UMM Salal filed a claim with FIFA on 15 October 2008 against the Player for breach of contract without just cause and requested a compensation of USD 2,000,000 from the Player and claimed Mallorca to be jointly and severally responsible for the payment of such compensation.

The Player denied the allegations submitted by UMM Salal and stated that he had breached the contract with just cause and therefore no compensation shall be due.

Mallorca requested the rejection of the claim and stated that it could have never induced to the Player to breach the second contract because such contract was actually signed subsequently to the first contract. Mallorca also pointed out that UMM Salal acted in bad faith while requesting the ITC of the Player in June 2008. As a consequence of that the Player could not participate in the matches that took place in July, August and half September 2008 and therefore Mallorca claimed USD 111,000 (2,5 monthly salaries) from UMM Salal as compensation.

On 15 May 2009 the Dispute Resolution Chamber of FIFA issued a decision (“the Decision”) by virtue of which the claim filed by UMM Salal was partially accepted and ordered a compensation of USD 160.000 to be paid by the Player to UMM Salal due to the breach of contract without just cause and also imposed a restriction of four months to the Player’s eligibility to play in official matches.

On 16 July 2009, the Appellants lodged a statement of appeal with the Court of Arbitration for Sports (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”).

In its statement of appeal, the Appellants also made an application for a stay of the Decision. In support of this request, the Applicants explained that if a stay is not put on the Decision, the effect will be to Mallorca of its football player until 1 November 2009, so effectively causing him to miss the first games of the Spanish championship.

The Appellants considered that the stay of the Decision will protect the Player and Mallorca from an irreparable harm as the Player will lose during the restriction period the possibility to play important matches and Mallorca will suffer the consequences of it when FIFA has established that the Spanish club has no responsibility in the alleged breach of contract committed by the Player.

The Appellants further mentioned that there are clear chances of success for the present appeal due to the fact that the second contract signed by the Player, which was supposed to enter into effect on 1 July 2008, never came into effect as the player terminated it by letter on 3 May 2008. Therefore, it can be strongly discussed that the player ended his contract within the protected period, because, as even FIFA recognizes in the Decision, such contract never entered into force.

In addition, the Appellant points out that the balance of interest is clearly favourable to the Player and Mallorca since the sanction imposed to the Player can be served at a later stage in the unlikely event that the Panel confirms the Decision, with no prejudice neither for FIFA nor for UMM Salal.

By letter dated 20 July 2009, the Respondents were invited by CAS to file their positions concerning the request for stay filed by the Appellant.

On 30 July 2009, FIFA filed its answer to the request for stay of execution in the following terms:

“As far as the Appellant’s request for stay the execution of the challenged decision is concerned, we hereby refer to the constant and continuous jurisprudence of the CAS, according to which requests for stay of execution in

case of sporting sanctions imposed on players and clubs in football related matters are basically accepted without exception. In view of this fact, but without prejudice to any similar or identical case or situation in the future, without prejudice to the decision regarding the sporting sanction in the present case as to the substance, on the correctness of which FIFA is still convinced as we will expose in our answer to the appeal brief, and without prejudice to our answer to the appeal and the final decision of the CAS in the present appeal procedure, please be informed that we refrain from objecting the Appellant's request to stay the execution of the challenged decision in question" (emphasis added).

UMM Salal never filed an answer to the request for stay of execution of the Decision.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed by the parties, derives from Article R47 of the Code and from Articles 62 ff. of the FIFA Statutes. CAS therefore has jurisdiction to decide the present dispute, including the Appellant's request for a stay.
2. Pursuant to Article R48 of the Code, the Appellant may file, together with its appeal brief, "*an application to stay the execution of the decision appealed against, together with reasons*".
3. Since no panel has been constituted yet and in accordance with article R37 of the Code, the President of the relevant Division may issue an order on provisional measures.

Admissibility

4. The Appellant filed its statement of appeal within the 21-day time limit provided in Article 63 of the FIFA Statutes, which is undisputed at this stage.
5. It further complied with all other requirements set out in Article R48 of the Code. In particular, the request for a stay was formed in the appeal brief and was substantiated.

Application for a stay

6. The Appellants' application for a stay of the challenged decision is dealt with as requests for provisional and conservatory measures, in accordance with Article R37 of the Code.
7. In the present case the Respondents have not contested the request for stay of execution filed by the Appellants and therefore, in line with CAS jurisprudence (CAS 2006/A/1050), the

President of the CAS Appeals Arbitration Division sees no reason for not staying the Decision.

8. For the sake of completeness the President of the Appeals Arbitration Division notes that the provisional stay granted in the present case is consistent with the CAS constant jurisprudence (*vide ad exemplum*, CAS 2006/A/1100, CAS 2007/A/1250 and CAS 2007/A/1672).
9. In view of the foregoing the Appellant's application for the stay of the Decision is accepted.

The Court of Arbitration for Sport rules:

1. The application for provisional measures filed by RCD Mallorca SAD and A. on 16 July 2009 in the matter CAS 2009/A/1909 is allowed.
2. The decision passed on 15 May 2009 by the Dispute Resolution Chamber of FIFA by virtue of which A. was imposed with a four months restriction to his eligibility to play in official matches is provisionally stayed until the Court of Arbitration for Sport issues a final award on the merits.
3. The costs of the present order shall be determined in the final award.