



Arbitration CAS 2012/A/2899 Perspolis (Piroozi) Athletic and Cultural Club v. Fédération Internationale de Football Association (FIFA) & Joao Arnaldo Correia Carvalho, award of 31 January 2013

Panel: Mr Hendrik Willem Kesler (The Netherlands), Sole Arbitrator

Football

Contract of employment between a club and a coach

Condition to raise successfully a plea of lack of jurisdiction

Jurisdiction of FIFA to hear employment disputes

1. According to Swiss law, a plea of lack of jurisdiction must be raised prior to any defence on the merits. Therefore, it is not accepted that a party which did not raise any objection to the jurisdiction of FIFA while it could have done so in the course of the first instance procedure before its Players' Status Committee, could object to the jurisdiction of FIFA in a subsequent CAS procedure. A party proceeding before the FIFA Players' Status Committee without raising any objection on the jurisdiction of FIFA must be deemed to have waived its right to challenge such jurisdiction in appeal.
2. In order to have the jurisdiction of FIFA set aside it would be necessary to evidence that the competent bodies of the national football federation, validly chosen by the parties, offered the guarantees provided by Article 22 (c) RSTP, namely fair proceedings and the respect of the principle of equal representation of players and clubs. Absent any evidence in this respect, FIFA is competent to hear employment-related disputes of an international dimension.

I. THE PARTIES

1. Perspolis (Piroozi) Athletic and Cultural Club (hereinafter: the "Appellant" or "Perspolis") is a football club with its registered office in Tehran, Iran. Perspolis is registered with the Football Federation of Iran (hereinafter: "FFI"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA").
2. The Fédération Internationale de Football Association (hereinafter: the "First Respondent" or "FIFA"), is the international federation governing the sport of football at worldwide level. FIFA is based in Zurich, Switzerland.
3. Mr Joao Arnaldo Correia Carvalho (hereinafter: the "Second Respondent" or "Mr Carvalho"), is a professional coach from Portugal.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On 4 March 2009, the Appellant and the Second Respondent concluded an employment contract (hereinafter: the “Contract”), valid for 17 months from the date of signing until the end 2009/2010 season of the Iranian professional league.
6. The Contract contains the following relevant provisions for the case at hand:
 1. *Article 6-8: “The total amount of the contract which is 238000 US Dollars that will be paid as below mentioned:*
 - 6-8-1: 700000 US Dollars for the beginning of the contract until 30 June 2009 as follows:
 - 6-8-1-1: 35000 US Dollars in cash at the time of signing of the contract;
 - 6-8-1-2: 17500 US Dollars on 1st of April 2009
 - 6-8-1-3: 17500 US Dollars on 1st of June 2009
 - 6-8-2: 168000 US Dollars for the following year of the contract (which begins from 1 July 2009 until 1 July 2010) provided that the parties do not wish to use article 8 of the contract, as follows:
 - 6-8-2-1: 68000 US Dollars on 1 July 2009
 - 6-8-2-2: 34000 US Dollars on 1 October 2009
 - 6-8-2-3 33000 US Dollars on 1 January 2010
 - 6-8-2-4: 330000 Dollars on 1 April 2010
 2. *Article 6-9: “All the payments shall be paid to the Assistant Coach by the Club on time and if the club delays more than 25 days from the due time of each payment, it will be deemed as the termination of the contract by the Club and the Club shall pay the compensation amount mentioned in article 8-2 of the contract to the Head Coach. In this case, the Head Coach is allowed not to attend the trainings and sign contract with other clubs”.*
 3. *Article 8-1: “Each party is entitled to inform, in writing, the other party of his decision for terminating the contract unilaterally from 25th of June, 2009 until 30th of June, 2009 and in this case the party who wishes to terminate the contract shall not pay compensations to the other party. Otherwise, the contract will automatically go through the following 12 months from 1st of July, 2009 under the terms and conditions of this contract”.*
 4. *Article 8-2: “If any of the parties wishes to terminate the contract unilaterally before or after the time mentioned in article 8-1, that party should pay the amount equal to 2 months of the Assistant Coach’s salary (which is 70,588 US Dollar per month) to the other party”.*
 5. *Article 9-5: “In case of any disputes, the matter will be considered in the disciplinary committee of the Football Federation of Iran and in case of the parties’ protest, the issue will be taken to FIFA”.*

7. On 29 May 2009, the Second Respondent addressed a letter to the Appellant in which he was *“informing again the respectable president and board, about the termination of the contract according to article 6-9, and payment of the compensation according to article 8-2”*.
8. Also in that particular letter, the Second Respondent reminded the Appellant that next 1st June 2009 another payment according to the article 6-8-1-3 must be made.
9. On 27 July 2009, the Second Respondent lodged a claim with FIFA against the Appellant for having failed to comply with its contractual obligations towards him.

III. PROCEDURE BEFORE THE SINGLE JUDGE OF THE PLAYERS’ STATUS COMMITTEE OF FIFA

10. On 27 July 2009, Mr Carvalho lodged a claim in front of FIFA against Perspolis for having failed to comply with its contractual obligations towards him.
11. In his letter to FIFA Mr Carvalho requested FIFA to condemn Perspolis to pay him the amount of USD 63,000 corresponding to:
 - *“Payment of April, article 6-8-1-2* *17,500 US Dollars*
 - *Payment of June, article 6-13-1-3* *17,500 US Dollars*
 - *Payment of 2 months salaries as compensation, Articles 8-1 and 8-2* *28,000 US Dollars”*.
12. The Appellant decided not to respond to the claim of Mr Carvalho at all, in spite of having been asked by FIFA to do so several times.
13. FIFA finally informed the Appellant that, in the absence of any reply, the Players’ Status Committee would take a decision on the basis of the information and evidence at disposal.
14. On 30 January 2012, the Single Judge of the Players’ Status Committee of FIFA (hereinafter: the “Single Judge”) decided to accept the claim of Mr Carvalho in full (hereinafter: the “Decision”).
15. The grounds of the Decision were notified to the FFI by fax letter dated 21 July 2012 and to Mr Carvalho on 12 July 2012.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 9 August 2012, the Appellant filed its Statement of Appeal.
17. On 17 August 2012, the Appellant filed its Appeal brief in accordance with Article R51 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”).

18. On 3 September 2012, the CAS Court Office informed the parties, that pursuant to Article R50 of the CAS Code, the Deputy President of the CAS Appeals Arbitration Division decided that a Sole Arbitrator shall be appointed in the case at hand.
19. On 9 October 2012, the First Respondent requested CAS that the Second Respondent should be joined as party to the present procedure, in accordance with Articles R54 and R41.2 of the CAS Code.
20. On 12 October 2012, the parties were advised that the Panel responsible for the present proceedings had been constituted and that Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands, had been appointed by the Deputy President of the CAS Appeals Arbitration Division as Sole Arbitrator.
21. The Parties did not raise any objections to the constitution of the Panel.
22. On 15 October 2012, the Appellant objected to the joinder of the Second Respondent.
23. In accordance with Article R55 of the CAS Code, on 22 October 2012, FIFA filed its Answer.
24. On 29 October 2012, the Sole Arbitrator decided to grant FIFA's request that the Second Respondent be joined in the present proceedings and granted him a deadline to file his submission.
25. On 12 November 2012, the Second Respondent filed his submission with CAS.
26. All parties informed the CAS Court Office that a hearing should not be held and that an award could be rendered on the basis of the written submissions only. The Sole Arbitrator decided to follow the parties' wishes and to render an Award on the sole basis of the written submissions.
27. On 4 December 2012, the Second Respondent returned a duly signed Order of Procedure. The Appellant and the First Respondent returned duly signed Orders of Procedure to CAS on 10 December 2012. In particular, the parties confirmed that the Sole Arbitrator may decide this matter on the basis of the written submissions and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES

28. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by them. However, the Sole Arbitrator has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

A. The Appellant's Submission

29. The submission of Perspolis, in essence, may be summarised as follows:

- The Appellant submits that given the existence of a written agreement of the parties to the contract on the referral of any dispute to the FFI, the Decision of the Single Judge of the Players' Status Committee on 30 January 2012 was issued by a body (the FIFA Players' Status Committee) which did not have jurisdiction and shall therefore be annulled.

To underline its submission on the lack of jurisdiction from FIFA's body, the Appellant refers to clause 9-5 in the Contract.

- The Appellant refers furthermore to the existence of an independent and impartial tribunal, *in casu* the Disciplinary Committee of the FFI and that FIFA should only be considered as the appellate body for the decisions issued by the said Disciplinary Committee.

B. The First Respondent's Submission

30. The submission of FIFA, in essence, may be summarised as follows:

- According to the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations"), the Single Judge was competent to deal with the case. In accordance with article 22 lit. c in conjunction with article 23 para. 3 of the FIFA Regulations, the FIFA Players' Status Committee, as well as, under certain circumstances, its Single Judge, is as a general rule, competent to deal with employment related disputes between a club and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings existing at international level.
- FIFA considers that the Appellant did not succeed to prove that the Disciplinary Committee of the FFI was such a competent national body, meeting the minimum procedural standards to establish that it is an independent arbitration tribunal guaranteeing fair proceedings.

C. The Second Respondent's Submission

31. The submission of Mr. Carvalho, in essence, may be summarised as follows:

- The Second Respondent kindly requests the Sole Arbitrator to take a decision in accordance with the information received from FIFA in this procedure, just in order to collect the amounts according to the Contract.

VI. DISCUSSION

A. Jurisdiction

32. The jurisdiction of CAS, which is not disputed, derives from article 67 (1) of the FIFA Statutes, which provides that *“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”*, and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
33. It follows that CAS has jurisdiction to decide on the present dispute.
34. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and it may issue a new decision which replaces the decision challenged.

B. Applicable Law

35. Article R58 of the CAS 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”.
36. The Sole Arbitrator notes that article 66 (2) FIFA Statutes provides the following:
“The provision of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
37. In the Contract, the Appellant and the Second Respondent agreed to the application of the various regulations of FIFA and thus subsidiarily to the application of Swiss law.
38. The Sole Arbitrator is therefore satisfied to accept the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.
39. Moreover, the Appellant refers to the application of article 67 (1) of the FIFA Statutes (2012) as well as article 23(3) of the FIFA Regulations (2008) and also article 16 (13) of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber.

C. Admissibility

40. The Appeal was filed within the deadline of 21 days set by article 67(1) of the FIFA Statutes.
41. The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

42. It follows that the Appeal is admissible.

VII. LEGAL DISCUSSION

A. Incidents / Procedural Motions

43. On 29 October 2012, the Sole Arbitrator decided to grant FIFA's request that Mr Carvalho be joined in the present proceedings and granted him a deadline to file his submission.
44. The Sole Arbitrator is of the opinion that the request of FIFA met the conditions of Article R41.2 of the CAS Code and was well-founded. In this case, the Single Judge rendered its Decision between two parties, Perspolis and Mr Carvalho.
45. On the basis of the Decision, Mr Carvalho obtained a legal (financial) position.
46. The Appellant, however, decided not to involve Mr Carvalho as a party in the appeal proceedings, but only FIFA, as the body that rendered the contested Decision.
47. The principles of a fair trial could be seriously violated if the Sole Arbitrator would not allow Mr Carvalho to express his views in the present procedure.
48. If the Sole Arbitrator would conclude that the Appeal should be upheld on the basis that FIFA was not competent to deal with the dispute between the Appellant and the Second Respondent, the latter would be forced to start proceedings in Iran in order to get a judgement about his contractual rights.
49. In the event that the Sole Arbitrator might come to the conclusion that FIFA had jurisdiction, he has to render an Award which would have obvious consequences on Mr Carvalho.
50. The Sole Arbitrator finally concludes that by joining Mr Carvalho as a party to the present proceedings, no rights of the Appellant are violated or harmed.

B. Main Issue

51. The main issue to be resolved by the Sole Arbitrator is:

Did the Single Judge of the FIFA Players' Status Committee have jurisdiction to rule on the claim lodged by Mr Carvalho in front of FIFA?

52. The Appellant submits that the Single Judge had no jurisdiction, referring to article 9-5 of the Contract, which reads as follows:

"In case of any disputes, the matter will be considered in the disciplinary committee of the Football Federation of Iran and in case of the parties' protest, the issue will be taken to FIFA".

53. The Appellant submits that the Disciplinary Committee of the FFI has exclusive jurisdiction to settle the case.
54. It is undisputed between the parties and confirmed by FIFA that FIFA's alleged lack of jurisdiction to issue the Decision was not raised by the Appellant during the proceedings in front of FIFA. This point was raised for the first time in front of CAS.
55. According to the law of the seat of the present arbitration, namely Swiss law, a plea of lack of jurisdiction must be raised prior to any defence on the merits (Article 186 para. 2 of the Swiss Federal Statutes on Private International Law). Therefore, it is not accepted that a party which did not raise any objection to the jurisdiction of FIFA while it could have done so in the course of the first instance procedure before its Players' Status Committee, could object to the jurisdiction of FIFA in a subsequent CAS procedure. It is noted however that there is no provision in the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber similar to Article 186 para. 2 of the Swiss Federal Statutes on Private International Law. The above-mentioned FIFA Rules provide that the FIFA Players' Status Committee shall examine its jurisdiction "*ex officio*", in the light of the relevant provisions of the RSTP. Nevertheless, a party proceeding before the FIFA Players' Status Committee without raising any objection on the jurisdiction of FIFA must be deemed to have waived its right to challenge such jurisdiction in appeals (see CAS 2005/A/937, award of 7 April 2006).
56. Notwithstanding the above, for the sake of completeness, it is also undisputed that the matter in issue is an employment-related dispute between a club and a player, of an international dimension. The Appellant however submits that FIFA was not competent to hear the dispute because the parties would have chosen another body to settle their case.
57. In that respect, as pointed out by the Appellant in the Appeal Brief, the relevant provision is article 22 (b) of the 2008 edition of the RSTP. This provision provides that FIFA is competent to hear "*employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the player and the clubs has been established at an national level within the frame work of the association and / or a collective bargaining agreement*".
58. In the view of the Sole Arbitrator, in order to successfully challenge the jurisdiction of FIFA, it is insufficient to submit that the parties could have validly chosen another body to settle their case. The wording of article 22 (c) of the RSTP is clear in saying that the jurisdiction of FIFA can only be waived in favour of the alternative jurisdiction of another body, where that other body is deemed to be "*an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the player and the clubs has been established at an national level within the frame work of the association and / or a collective bargaining agreement*".
59. In the present case, the submissions of the Appellant are limited to assert that the parties are bound to article 9-5 of the Contract, *i.e.* the Disciplinary Committee of the Football Federation of Iran.

60. The First Respondent was obviously aware of the contents of article 22 (c) of the FIFA Regulations and asked the Appellant (with copy to the FFI) during the procedure in front of FIFA - by letter dated 9 August 2011 - to provide FIFA with official Statutes or Regulations of the said tribunal. *"Documentation, explaining how the tribunal functions, is composed and how it gets together in order to adjudicate on a particular case"*.
61. In the same letter FIFA referred to *"Article 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, according to which, any party deriving a right from an alleged fact shall carry the burden of proof"*.
62. The only regulations the Appellant brought forward was the Disciplinary bylaws of the FFI that entered into force on 22 November 2009.
63. In its Appeal Brief, the Appellant did refer to former versions (2007 and 2008) of such bylaws. However, the Appellant failed to produce these documents before FIFA and in the present arbitration proceedings.
64. In order to have the jurisdiction of FIFA set aside it would be necessary to evidence that the competent bodies of the Iran Football Federation, validly chosen by the parties, offered the guarantees provided by Article 22 (c) RSTP, namely fair proceedings and the respect of the principle of equal representation of players and clubs.
65. As the Appellant, in the present case, did not provide FIFA with any applicable documents at all, the mandatory criteria of article 22 (c) of the FIFA Regulations have not been met.
66. In the light of the above, the Sole Arbitrator is of the opinion that the Decision of the Single Judge of FIFA on the question of his jurisdiction was correct.
67. It follows that the Appeal shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 9 August 2012 by Perspolis Athletic & Culture Club against the Decision issued on 30 January 2012 by the Single Judge of the Players' Status Committee of FIFA is dismissed.
2. The Decision issued on 30 January 2012 by the Single Judge of the Players' Status Committee of FIFA is confirmed.

(...)

5. All other motions or prayers for relief are dismissed.