

**Arbitration CAS 2011/A/2563 CD Nacional v. FK Sutjeska, award of 30 March 2012**

Panel: Mr Mark Hovell (United Kingdom), President; Mr João Nogueira da Rocha (Portugal); Mr Michele Bernasconi (Switzerland)

*Football**Compensation for training**Conformity of a time limit to request the grounds of a decision with fundamental rights and principles**Conformity of that time limit with the FIFA Statutes**Principles of interpretation of the rules and statutes of an association**Meaning of Article 15 of the FIFA Rules Governing the Procedures of the PSC and the DRC*

1. **Article 15 of the FIFA Rules Governing the Procedures of the PSC and the DRC, according to which a decision without grounds becomes final and binding if the party does not request the grounds of the decision within 10 days of its notification, is compatible with the fundamental legal principles belonging to the *ordre public* and does not infringe any fundamental rights nor any Swiss mandatory provision. Indeed, the provision serves a legitimate purpose, has been well accepted within the international football community and is similar to what can be found in relation to access to state courts.**
2. **Article 15 of the FIFA Rules does not contradict nor change the FIFA Statutes. The existence of this provision triggers *de facto* an extension of the 21-days deadline foreseen in the FIFA Statutes. A party, after having requested the grounds of the decision, will have several weeks to consider whether or not to appeal, first on the basis of the simple ruling received from FIFA. Upon receipt of the reasoned decision, the 21-days deadline will start: it is not only that the term of 21 days to lodge an appeal remains the same, but also that in practice, it becomes enlarged as regards of the time that FIFA takes in issuing the full motivated decision.**
3. **The rules and the statutes of an association have to be interpreted either in accordance with the subjective will of the rulemaking persons (the so-called “Willensprinzip”, i.e. principle of the will) or with the objective meaning that the addressees of the rule would give to that rule, in good faith (the so-called “Vertrauensprinzip”, i.e. principle of confidence or of good faith). Swiss jurisprudence has applied from time to time one or the other principle.**
4. **From a subjective and from an objective point of view, the wording of Article 15 of the FIFA Rules shall be interpreted in the way that a party wishing to appeal against a FIFA decision must first request the grounds of the decision. If no grounds are requested within said deadline, FIFA as well as the other party affected by the FIFA decision, can consider that the other party has waived its right to appeal against the decision.**

Club Desportivo Nacional (“Nacional” or the “Appellant”) is a football club with its registered office in Funchal, Portugal. It is a member of the Portuguese Football Federation (PFF) and plays in the Portuguese First Division, Primeira Liga.

FC Sutjeska (“Sutjeska” or the “Respondent”) is a football club with its registered office in Nikšić, Montenegro. It is a member of the Football Association of Montenegro (FAM) and plays in the First League of Montenegro.

On 7 December 1989 the footballer V. (the “Player”) was born in Nikšić, Montenegro.

On 6 September 2000 the Player was registered as an amateur player with the Respondent.

On 12 August 2008 the Player signed his first professional contract with the Respondent.

On 13 August 2008 the Player was registered as a professional player by the Respondent with the FAM.

On 15 October 2009 the Player signed a further professional contract with the Respondent.

On 17 June 2010 the Player and the Respondent entered into an agreement to terminate the contract between them (the “Rescission Agreement”).

On 11 August 2010 the Player signed for the Appellant, entering into a professional contract with it. On the same date the Appellant registered that contract via the Transfer Matching System (TMS).

On 12 August 2010 the Appellant requested an International Transfer Certificate (ITC) for the Player.

On 13 August 2010 the ITC was issued. A reference was included on the TMS by the Respondent that it was claiming training compensation for the Player.

On 23 August 2010 the Respondent wrote to the Appellant requesting training compensation directly.

On 7 March 2011 the Respondent lodged a complaint with the Fédération Internationale de Football Association (FIFA) requesting the payment of EUR 340,000.

On 22 March 2011 FIFA replied to the Respondent and referred to The Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “FIFA Procedural Rules”).

On 14 April 2011 FIFA forwarded the Respondent’s complaint to the Appellant via the PFF.

On 3 May 2011 the Appellant replied to FIFA.

On 10 August 2011 the FIFA Dispute Resolution Chamber (the “FIFA DRC”) awarded the Respondent training compensation in relation to the Player in the sum of EUR 335,000 (the “Appealed Decision”).

On 17 August 2011 the Appealed Decision was notified to the parties. Annexed to the Appealed Decision was a notice from FIFA that advised the parties that they had 10 (ten) days to request the grounds of the Appealed Decision, else the same would become “final and binding”.

On 1 September 2011 the Appellant wrote to FIFA:

“(...) we kindly request the findings of the decision, whose deadline we request you to be extended based on FIFA’s current jurisprudence (...). We inform you that we’ll make the payment of the costs immediately”.

On 5 September 2011 FIFA wrote to the Appellant stating that the request was outside the given deadline.

On 6 September 2011 the Appellant lodged its Statement of Appeal with the Court of Arbitration for Sport (CAS) submitting the following request for relief:

- a) *“to reform the Appealed Decision recognizing that the hiring of the Player [V.], by Nacional, should not be considered as a transfer during the contract period of the employment contract that linked him to the previous Club, here Respondent, because such expiry was imposed to the Player by the previous Club, here Respondent, due to failure by the Respondent of its obligations, including wages;*
- b) *there cannot be training compensation because on the date of his hiring by Nacional the Player already had the professional status; and*
- c) *was a free Player, was unemployed, whose unemployment was assigned to him by the Club Sutjeska, here Respondent”.*

On 14 September 2011 the Appellant lodged its Appeal Brief with the CAS.

On 16 September 2011 the Appellant wrote to the CAS withdrawing its request for a stay of the Appealed Decision.

On 8 October 2011 the Respondent filed its Answer with the CAS with the following request for relief:

- a) *“The CAS shall not deal with the appeal of the Appellant against the FIFA DRC Decision dated 10 August 2011 – case reference ROV.11-00670. However the Appellant’s appeal against the FIFA DRC decision dated 10 August 2011 – case reference ROV.11-00670 shall be dismissed and the FIFA DRC decision dated 10 August 2011 shall be confirmed.*
- b) *The Appellant shall bear all costs of the procedure before the CAS.*
- c) *The Appellant shall compensate the Respondent all expenses of this appeal arbitration procedure.*
- d) *The Appellant to pay the Respondents total expenses for legal representatives of the Respondent, also legal assistance and all the expenses of the Respondent related to this appeal arbitration procedure”.*

On 12 October 2011 FIFA wrote to the CAS and gave its view on the applicable time limits.

On 8 December 2011, FIFA provided a copy of its case file regarding the matter in hand, which was made available to the parties.

A hearing was held on 24 January 2012 at the CAS premises in Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

A director (representative) of the Respondent was heard by telephone. In addition, Mr Omar Ongaro, Head of Players' Status and Governance at FIFA, was also in attendance.

There were no witnesses or experts providing evidence or opinions at the hearing, but the representative of the Respondent spoke and were examined by the Panel and the Appellant, on the telephone. He confirmed that whilst there were arrears (less than EUR 1,000) due to the Player, his contract was terminated by mutual agreement, as the Player wished to play abroad, but that at the same time, the Respondent maintained its rights and claim to training compensation.

The parties were given the opportunity to present their cases, submit their arguments and to answer the questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to its written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

LAW

Jurisdiction of the CAS

1. Article R47 of the Code of Sport-related Arbitration (the "Code") provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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-related body".

2. Articles 63 and 64 of the FIFA Statutes provide that the CAS has jurisdiction to hear appeals against final decisions passed by FIFA's legal bodies. It is not contested that the Appealed Decision is a decision rendered by the FIFA DRC, or that the legal remedies within FIFA have been exhausted. The only dispute raised by the Respondent related to the admissibility of

the Appellant's appeal, not the jurisdiction of the CAS to deal with the matter in hand, if the appeal was to be declared admissible.

3. Further, such jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the parties. Therefore, the Panel is satisfied that the requirements of Article R47 of the Code are met and that the Panel has jurisdiction to decide the case in hand, subject to the admissibility of the appeal.

Applicable Law

4. Article R58 of the Code provides as follows:

"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. The Panel noted that the parties had both referred to the FIFA Regulations and that they had not agreed on any applicable law.
6. Moreover, Art. 62 paragraph 2 of the FIFA Statutes provides that the:
"Provisions of the CAS Code of Sport-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".
7. The "Federation" in the sense of Article R58 of the Code, i.e. FIFA, is domiciled in Switzerland, a fact that also requires that Swiss Law be applicable.
8. The Panel determined that subject to the primary application of the FIFA Regulations, Swiss Law shall therefore also apply subsidiarily.

Admissibility

A. In general

9. Article R49 of the Code directs the Panel to look within the statutes and regulations of the federation issuing the Appealed Decision for the time limit for bringing the appeal.
10. The Respondent submitted that as the Appellant had failed to request the grounds of the Appealed Decision within 10 (ten) days of receipt, the Appellant has not fulfilled the terms and conditions of the relevant FIFA Procedural Rules. Reference was made to Article 15 of the FIFA Procedural Rules:

“1. The Players Status Committee, the DRC, the Single Judge and the DRC Judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have 10 days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding.

2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision.

3. If the parties do not request the grounds of a decision, a short explanation of the decision should be recorded in the case files.

4. All decisions that lead to sporting sanctions may only be communicated with grounds”.

11. The Panel noted that on 17 August 2011 FIFA notified the parties of the Appealed Decision by fax. The Appellant therefore had until 27 August 2011 to request the grounds for the Appealed Decision to comply with the FIFA Procedural Rules.

12. Further the Panel noted that the Appealed Decision contained the following addendum:

*“**Note relating to the findings of the decision** (article 15 and 18 of the Rules governing the procedures of the Players Status Committee and the Dispute Resolution Chamber):*

*A request for the ground of the decision must be sent, in writing, to the FIFA General Secretariat **within 10 days** of receipt of notification of the findings of a decision. Failure to do so within the stated deadline will result in the decision becoming final and binding.*

No costs (cf. point 5.) shall be charged if a party decides not to ask for the grounds of the decision any advance of costs shall be reimbursed to the party concerned”.

13. The Panel noted that by a fax to FIFA on 1 September 2011, the Appellant requested the grounds for the Appealed Decision and requested an extension of the 10-days deadline. On 5 September 2011, FIFA replied, stating the Appellant was too late and could not request the grounds.

14. The Panel noted that the Appellant referred to FIFA Statutes at Article 63.1, which provides:

“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”.

15. The Appellant argued that the FIFA Statutes allowed it 21 days in which to bring its appeal to CAS. It did so on 5 September 2011, as such the appeal should be admissible.

16. The Panel was aware of a number of previous decisions of other CAS panels on the issue of the timeliness of the appeal and, in addition to considering the same and hearing the parties’ submissions made on this preliminary issue at the hearing, also invited the Head of Players’ Status and Governance at FIFA, Mr Omar Ongaro, to address the Panel and the parties at the hearing. The Panel and the parties had the possibility to ask questions to Mr Ongaro and to comment on his oral submissions.

B. *CAS jurisprudence*

17. The case CAS 2008/A/1705 was relied upon by the Appellant. The case CAS 2008/A/1705 considered the 21-days deadline in Article 63.1 of the FIFA Statutes and the 10-days deadline that appeared in the FIFA Procedural Rules. Article 15 of that edition of the FIFA Procedural Rules was practically identical to the current version, save that if the request for the grounds of the decision was not made within the 10 days, then the result was “*the decision coming into force*” as opposed to “*the decision becoming final and binding*”.
18. In the case CAS 2008/A/1705, the appellant did not request the grounds, but proceeded straight to CAS with its appeal within the 21-days deadline.
19. Whilst the case CAS 2008/A/1705 determined that Article 15 of the FIFA Procedural Rules is neither incompatible with Article 75 of the Swiss Civil Code nor with the fundamental legal principles belonging to the “*ordre public*” it also started to consider whether the 10-days deadline in the FIFA Procedural Rules was compatible with the hierarchy of norms within FIFA. According to this principle, “*regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them*” (paragraph 8.2.10).
20. The Panel in the case CAS 2008/A/1705 noted that “*de facto, any party failing to request the grounds of a decision within 10 days loses its right to appeal to CAS and, as such, is simply faced with a reduced deadline. However, one may note also that any party asking for the grounds of the decision is granted, de facto, a longer period of time to decide whether or not to accept the results of the FIFA procedure and DRC decision*” (paragraph 8.2.13). Ultimately, that panel did not need to reach a conclusion on the hierarchy of norms issue, as the notice attached to the decision was confusing and referred to both the 21-days deadline in the FIFA Statutes as well as the 10-days deadline in the FIFA Procedural Rules. For that reason, the appeal in the case CAS 2008/A/1705 was deemed admissible.
21. The case CAS 2008/A/1708 again looked at this issue and was based on the same edition of the FIFA Procedural Rules as the case CAS 2008/A/1705.
22. In the case CAS 2008/A/1708, the appellant did request the grounds for the decision, but the request had been made after the expiry of the 10-days deadline. The appellant’s appeal to CAS was made within 21 days of the receipt of the decision.
23. The Panel in the case CAS 2008/A/1708 also analyzed whether or not the provision of Article 15 of the FIFA Procedural Rules was in breach of any fundamental legal principles. Like in the case CAS 2008/A/1705, the Panel determined not.
24. The Panel of the case CAS 2008/A/1708 also analyzed whether Article 15 of the FIFA Procedural Rules is compatible with article 63.1 of the FIFA Statutes and consistent with the hierarchical structure of the FIFA regulations. The Panel concluded that, even though very little is required by a party within the 10 days to request the grounds, if a party does not wish

the grounds, as the CAS, pursuant to Article R57 of the Code can hear any appeal *de novo*, the grounds for the decision should not be considered a pre-requisite for an appeal.

25. The Panel of the case CAS 2008/A/1708 also analyzed the use of the wording “*the decision coming into force*”. The Panel suggested the wording “*final and binding*” instead. This wording was suggested as an express warning to the parties receiving decisions from FIFA, as the Panel in the case CAS 2008/A/1708 felt that the existing wording was not clear. Further, the Panel noted the FIFA Procedural Rules were new at that time and the appellant was not familiar with the mechanism. The appeal in the case CAS 2008/A/1708 was deemed therefore admissible.
26. The case CAS 2011/A/2439 looked at the issues again, however, the appeal in this case was deemed inadmissible.
27. In the case CAS 2011/A/2439 the 10-days deadline was in Article 116.1 of the FIFA Disciplinary Code. The wording of the Article is broadly similar to Article 15 of the FIFA Procedural Rules, save the effect of not requesting the grounds will “*result in the enforcement of the decision*”.
28. The Sole Arbitrator in the case CAS 2011/A/2439 acknowledged there could be a debate on the hierarchy of norms, but determined that the procedural rule was complimentary to the FIFA Statutes. The rule “*is to be rather considered as part of the development of general provisions ruling the appeal of decisions to the CAS*” (paragraph 51).
29. The Sole Arbitrator determined that the requirement to request the grounds for a decision is not “*a real burden or a limitation of rights for the appellants (...) no extra load of work, no disproportionate or excessive commitments are involved*” (paragraph 52). The Sole Arbitrator also noted the purpose behind these procedural rules, “*to cope with the heavy caseload of FIFA and contribute to the goal of an efficient administration of justice*” (paragraph 55).
30. The Sole Arbitrator in the case CAS 2011/A/2439 noted that the appellant did not request the grounds at all, yet was a football association and a member of FIFA and should have been aware of these now well established procedural rules. The appellants in the cases CAS 2008/A/1705 and CAS 2008/A/1708 may not have been as aware of the new procedural rules, as their cases arose just after the FIFA Procedural Rules were issued in 2008.

C. *FIFA's position*

31. As mentioned above, the Panel considered that it would be helpful to hear from FIFA the context, the history and goals behind the procedural rules at stake, i.e. the possibility for FIFA to issue in certain matters decisions without grounds, with the right for the parties to request within 10 days that the grounds of the decision are issued, to be thereafter in position to appeal against it.

32. Representing FIFA, Mr Ongaro explained at the hearing that the FIFA Procedural Rules were adopted on 1 July 2008 and were amended slightly on 1 October 2010, when following the case CAS 2008/A/1708 the words “*final and binding*” were introduced into Article 15.1 to replace “*comes into force*”. The mechanism or procedures were to somehow replicate the Procedural Rules of the Canton of Zurich (cf. the old Para. 158 of the Law governing the Organization of the Judiciary of the Canton of Zurich). These rules have now been replaced by the Swiss Code of Civil Procedure, which follows the same principles and reads (in an unofficial translation) as follows:

“Art. 239 Notice to the parties and statement of grounds:

1. *The court may give notice of the decision to the parties without providing a written statement of the grounds:*
 - a. *at the main hearing, by handing over the written conclusions to the parties and giving an oral summary of the grounds;*
 - b. *by serving the parties with the conclusions.*
2. *A written statement of the grounds must be provided if one of the parties so requests within 10 days of the notice being given of the decision. If no statement of grounds is requested, the parties are deemed to have waived their right to challenge the decision by appeal or objection.*
3. *The above is subject to the provisions of the Federal Supreme Court Act of 17 June 2005 on notice of decisions that may be referred to the Federal Supreme Court”.*

33. The FIFA Procedural Rules are on the FIFA website (in all 4 official languages) and these were circulated to the members of FIFA, with copies also sent to FIFPro and the Confederations along with FIFA Circular 1148 on 23 June 2008. Within the Circular was the following paragraph:

“Moreover, we would like to draw your attention to article 15 of the rules, according to which decisions (...) may be issued without grounds. The parties will then have 10 days to request the fully motivated decision, if they deemed it appropriate, otherwise the decision will become final and binding”.

34. Mr Ongaro noted that at first the notices that were annexed to decisions were not always clear and referred to the decisions in the cases CAS 2008/A/1705 and CAS 2008/A/1708. As such the notes are now clearer and have adopted the wording suggested by the Panel in the case CAS 2008/A/1708 i.e. “*final and binding*”. FIFA believed it had now overcome the issue of those cases and that the clarifying position of CAS in the case CAS 2011/A/2439 was correct. Further, these rules have now been around for some time and have been accepted by the vast majority of the users of the FIFA dispute resolution process.

35. FIFA renders approximately 500 decisions from the DRC, PSC and through its single judges each year. In just less than half of the cases the parties do not request the grounds. Mr Ongaro was only aware of two instances where the 10/21-days deadlines had become an issue in the last year, the present matter being one of them and the other being a case pending at CAS under CAS 2011/A/2436.

36. Mr Ongaro therefore believed that the FIFA Procedural Rules were familiar to all and there were no hierarchy or other validity issues to consider.
37. To consider the FIFA Procedural Rules shortened the 21-days deadline in the FIFA Statutes was wrong, in his opinion. FIFA believed that Article 15.1 extends it for those that request the grounds. Under Article 239 of the Swiss Code of Civil Procedure, an appeal requires the grounds. All a party has to do is to email or write to FIFA within ten days upon receipt of the decision and say “*grounds please*” along with a reference to the decision. The 21-days deadline is then extended, as it runs from the date when the grounds will be issued and received by the parties. To argue that the step to be made within ten days is an obstacle to the right to appeal would be “*excessive formalism*”, as has been rejected by the CAS in CAS 2009/A/1956.
38. Mr Ongaro also explained the benefit for many in not requesting the grounds, as then the procedure becomes free and any procedural costs are returned to the parties, in accordance with Article 18.3 of the FIFA Procedural Rules. A fact that is spelt out to the parties in the note annexed to any decision.
39. Mr Ongaro acknowledged that it may take up to four months (sometimes even longer) for FIFA to produce the grounds of a decision and that some parties may wish to go to CAS as quickly as possible. However, in his view the possibility for parties to FIFA procedures to accept and comply with a FIFA decision without requesting the grounds has been an alternative well accepted in the international football family.

D. *Panel's view*

a) Validity of Art. 15 FIFA Procedural Rules

40. The Panel notes the common view of previous CAS panels that the FIFA Procedural Rules do not infringe any fundamental rights and adopts that position too: As stated in the case CAS 2008/A/1705, it is true that “*the time limit of ten days is short. However, little is required from an appellant within this time frame. He doesn't need to file a full brief that outlines his legal position. He is not even required to file specific motions or requests. The only thing he has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of FIFA. Additionally, the 10 days-deadline of Art. 15(1) of the DRC Procedural Rules does not shorten the deadline which is applicable for filing an appeal, once the grounds of the decision are served to the parties. Indeed, the relevant 21 days-deadline remains untouched by Art. 15(1) of the DRC Procedural Rules*” (paragraph 8.2.8).
41. Furthermore, the provision serves a legitimate purpose, which is a more efficient administration of the dispute resolution system offered by FIFA to its (direct and indirect) members. Furthermore, such purpose has been well accepted within the international football community, as submitted by FIFA during the hearing.

42. The Panel further notes that the provision is indeed not an “invention” of FIFA and that a similar restriction can be found also in relation to access to state courts: In fact, as indicated above, it is accepted under Swiss law that a party may be deemed to have waived its right to challenge a decision by appeal or objection if that party does not request the grounds of the decision within a certain deadline (cf. Art. 239(2) of the Swiss Code of Civil Procedure).
43. For all the above reasons the Panel is satisfied that Article 15 of the FIFA Procedural Rules is compatible with the fundamental legal principles belonging to the *ordre public* and does not infringe any fundamental rights nor any Swiss mandatory provision.
44. In principle, Swiss associations have the right to freely establish the rules governing their internal life. Swiss law has a well established tradition of respect of the freedom of the associations and their right to set up the legal framework for the association and its members. The number of mandatory provisions to be respected is indeed very low.
45. The statutes of an association are, similar to the articles of incorporation of other legal entities, the fundamental set of rules of an association (cf. RIEMER H.M., Berner Kommentar, Die Vereine – Systematischer Teil vor Art. 60-79 ZGB, N 320). But statutes are often not the only source of valid and binding legal rules of an association: rules of a higher federation, decisions of the association, regulations, agreements with a member or with a third party and even simply stable consistent practice within the association can contain part of the legal binding set of rules.
46. In Swiss jurisprudence it is disputed whether a stable, consistent practice can deviate from the rules originally set out in the statutes (cf. RIEMER, *op. cit.*, N 354). It seems questionable that the above mentioned principle of hierarchy of norms must always be applied in a strict way. In any event, whether or not a specific regulation of an association that deviates from the original content of the statutes is *per se* invalid is a legal issue that can be left open in the present case, because Article 15 of the FIFA Procedural Rules does not contradict nor change the FIFA Statutes. The Panel shares the view of the Sole Arbitrator in the case CAS 2011/A/2439 according to which “*the 10-days time limit to request the grounds of a decision shall be deemed complementary to the deadline of 21 days foreseen in article 63 of the FIFA Statutes*” (paragraph 51).
47. In fact, the existence of Article 15 of the FIFA Procedural Rules triggers *de facto* an extension of the 21-days deadline foreseen in the FIFA Statutes. A party, after having requested the grounds of the decision, will have several weeks to consider whether or not to appeal, first on the basis of the simple ruling received from FIFA. Upon receipt of the reasoned decision, the 21-days deadline will start: “*It is not only that the term of 21 days to lodge an appeal remains the same, but also that in practice, it becomes enlarged as regards of the time that FIFA takes in issuing the full motivated decision*” (case CAS 2011/A/2439, paragraph 53).
48. Finally, the Panel wishes to add that whether or not CAS, pursuant to Article R57 of the Code, can hear any appeal *de novo*, does not prohibit to an association to set up rules which

govern its dispute resolution system and the compliance of which, for instance, limits the possibility for a party to appeal against a decision (cf. CAS 2004/A/674, paragraph 47).

49. To sum up, for all the reasons above, the Panel concludes as a first interim result, that Art. 15 of the FIFA Procedural Rules is neither incompatible with Swiss mandatory rules nor with fundamental legal principles nor is in contradiction with the Statutes of FIFA.

b) Meaning of Art. 15 FIFA Procedural Rules

50. The Panel first notes FIFA's position regarding its refusal to grant to the Appellant an extension of the 10-days deadline, when asked to do so by the Appellant in its fax of 1 September 2011. Having missed that deadline, FIFA stated, the Appealed Decision became "*final and binding*".
51. The issue is what does "*final and binding*" mean? Does it mean the decision is no longer capable of being appealed or not?
52. On one side, the Panel is aware that there are references within the FIFA Statutes dealing with the process of appealing an "*internally final and binding*" decision to the CAS. The Panel notes in particular references within Article 63 of the FIFA Statutes itself. At Article 63.5 and again at article 63.6 there is scope for FIFA and WADA respectively "*to appeal to CAS any internally final and binding doping-related decision*".
53. On the other side, the rules and the statutes of an association have to be interpreted either in accordance with the subjective will of the rulemaking persons (the so-called "*Willensprinzip*", i.e. principle of the will) or with the objective meaning that the addressees of the rule would give to that rule, in good faith (the so-called "*Vertrauensprinzip*", i.e. principle of confidence or of good faith). Swiss jurisprudence has applied from time to time one or the other principle (cf. RIEMER, *op. cit.*, N 329 *et seq.*). However, in the present case, the Panel is satisfied that the rule at stake, i.e. Article 15 FIFA Procedural Rule, can and shall be interpreted in the same way, independently on which principle is applied.
54. "Subjective" point of view: The Panel found it extremely helpful to hear from FIFA in this matter and to be provided with information on the context behind the FIFA Procedural Rules. The genesis of the rule, its drafting, the way its conception and introduction was communicated by FIFA to its members, all this clearly show that FIFA's intention was to give to the users of the FIFA dispute resolution process the possibility to accept a decision on the basis of its ruling only, and by doing so to save time and money, or ask the grounds of the decision to be issued, postponing the party's own decision about filing of an appeal against the FIFA's decision at a later stage, after receipt of the grounds. The goal of FIFA was therefore evidently to facilitate a more efficient administration of the caseload within the FIFA dispute resolution bodies, by offering to the parties a "two-steps" system already in use in relation with the access to state courts and giving to parties a possibility of better considering whether or not a dispute should be continued at CAS level.

55. Further, by declaring that the parties had to ask for the reasons of the decisions with 10 days of the notification, failing which the decision would become “*final and binding*”, the intention of FIFA was also clear: first of all, it was using the words explicitly suggested by the CAS in the case CAS 2008/A/1708. Second, it was also using the same terms used by the Para. 158 of the Law governing the Organization of the Judiciary of the Canton of Zurich (see its translation in case CAS 2008/A/1705, paragraph 8.2.8). Third, FIFA clarified its will even more by indicating, in the second paragraph of Article 15 of the FIFA Procedural Rules, that the deadline “*to lodge an appeal begins upon receipt of this motivated decision*”.
56. There can be therefore no doubt that the intention of the rule maker when introducing the system of Article 15 of the FIFA Procedural Rules – and even more when amending its wording to “comply” with the suggestion of the CAS Panel of the case CAS 2008/A/1708 – was to introduce a 10 days-deadline for a party to request the grounds of a decision, failing which the FIFA decision would become final and binding and no appeal against it would be possible any longer.
57. “Objective” point of view: The same conclusion is reached if instead of focusing on the meaning resulting from the will of the rule maker one does look at the way the addressees of Art. 15 of the FIFA Procedural Rules could have and should have interpreted in good faith the rule.
58. First, the information submitted by FIFA at the hearing in relation with the almost unanimous interpretation, understanding and acceptance of the rule given by hundreds of parties has remained undisputed. The Panel has not been provided with any other information and it has indeed no reason to believe that the numbers provided by FIFA were incorrect: it seems therefore clear that for the vast majority of the users of the FIFA dispute resolution system an appeal against a FIFA decision is only possible if (i) one does request the grounds of it within the deadline of 10 days and (ii) one does file an appeal with CAS within 21 days upon receipt of the reasoned decision.
59. Second, and differently from the situation existing in 2008 when the two-steps system of notification of decisions without grounds was introduced, the Panel is satisfied that FIFA (i) has removed such inconsistencies in the wording of the rules that were held against FIFA for instance in the case CAS 2008/A/1705, (ii) has amended the wording of the rules to follow the suggestions of CAS and of the case CAS 2008/A/1708 in particular and (iii) issued notices to the parties in a clear way so that in good faith no doubt can exist on what action a party is requested and entitled to do upon receipt of a FIFA decision without grounds.
60. Third, in the present case, the Appellant was made aware of the FIFA Procedural Rules in advance of the receipt of the Appealed Decision. A first time was when FIFA forwarded the Respondent’s original complaint to the Appellant via the Portuguese Football Federation on 14 April 2011, numerous references and directions were made to the FIFA Procedural Rules. The Panel also noted the express reference in the notice annexed to the Appealed Decision, directing the parties to Article 15.1.

61. Fourth and finally, the Panel notes *ad abundantiam* that the Appellant clearly showed to be well aware of the FIFA Procedural Rules: in fact, Appellant requested the grounds before filing any appeal with CAS. However, it made a mistake and missed the 10-days deadline. It asked FIFA to extend the deadline, which FIFA, in line with its rules, refused to do.
62. The Panel is therefore satisfied that in general the addressees of the FIFA Procedural Rules do, in good faith, correctly understand Article 15 FIFA Procedural Rules in the meaning it was enacted, i.e. as a first deadline of 10 (ten) days to request the grounds, failing which no appeal against the FIFA decision would be possible, and with an untouched deadline of 21 days to file an appeal with CAS, such deadline starting upon receipt of the reasoned decision.
63. The Panel therefore determines that the Appellant was aware and accepted the FIFA Procedural Rules as part of the FIFA dispute resolution process. The Panel is satisfied that from a subjective and from an objective point of view the wording of Article 15 FIFA Procedural Rules shall be interpreted in the way that a party wishing to appeal against a FIFA decision must first request the grounds of the decision. If no grounds are requested within said deadline, FIFA as well as the other party affected by the FIFA decision, can consider that the other party has waived its right to appeal against the decision.
64. Accordingly, in the case at hand, Article 15 of the FIFA Procedural Rules can be held against the Appellant: it filed its request for grounds when the applicable deadline had already expired and, therefore, the appeal filed against the Appealed Decision of 17 August 2011 is inadmissible.
65. As a final comment, the Panel wishes to clarify that it can see circumstances in which a party that did not request the grounds of a FIFA decision within the 10-days deadline may nevertheless not be considered to have waived its right to appeal against the decision. This would be the case where a party upon receipt of a FIFA decision without grounds would file within the 10-days deadline directly an appeal against the decision, independently on whether such appeal would be filed with FIFA or with CAS directly. These two alternatives have to be considered separately, as follows:
66. In the event that – instead of a request for issuance of the grounds – an appeal against an unreasoned decision would be filed within ten days *with FIFA*, the Panel submits that FIFA would have to inform the parties that such “appeal” would be treated as a request to issue a reasoned decision. The affected party will have 21 days to appeal (in other words: to “confirm its will to appeal”) at a later stage, i.e. upon receipt of the reasoned decision.
67. In the event that – instead of a request for issuance of the grounds – an “appeal” against an unreasoned decision would be filed within ten days *with CAS* directly, the Panel, taking into due consideration the statements made by FIFA at the occasion of the hearing, submits that CAS would have to inform the parties that (a) the “appeal” seems to be premature, (b) the “appeal” would be forwarded to FIFA which shall consider such “appeal” as a proper request to issue a reasoned decision and (c) upon receipt of the reasoned decision the appellant would

then have a deadline of 21 days to decide whether he/it would file or not an appeal against the (reasoned) decision of FIFA.

68. Finally, even though the vast majority of the parties to FIFA dispute resolution cases seem to well understand the meaning of Article 15 of the FIFA Procedural Rules, FIFA may consider to follow the example of the Swiss federal rule maker and indicate in the said provision and/or at the end of its decisions that failing a request for grounds within the applicable deadline, the FIFA decision would become final and binding and the parties will be deemed to have waived their rights to file an appeal with CAS. Since such a provision does not contradict the FIFA Statutes, an amendment of those is not necessary but may be taken nevertheless into consideration by FIFA.

Conclusion

69. The Panel determines that the Appellant's appeal is inadmissible and therefore cannot be entertained and is rejected.
70. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other motions or prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by CD Nacional on 6 September 2011 against the decision of the FIFA DRC dated 10 August 2011 is deemed inadmissible and rejected.

(...)

4. All other or further claims are dismissed.