

CAS 2020/A/7996 Ismaily Sporting Club v. Egyptian Football Association

Arbitral Award

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr András Gurovits, Attorney-at-law in Zurich, Switzerland

in the arbitration between

Ismaily Sporting Club, Ismailia, Egypt.

Represented by Mr Nasr El Din Azzam, Sport Makers Law & Management Firm, Cairo, Egypt

- Appellant -

and

Egyptian Football Association, Cairo, Egypt

Represented by Mr Hussein Helmy, in-house Legal Counsel, Cairo, Egypt

- Respondent -

I. THE PARTIES

1. Ismaily Sporting Club (the “Appellant”) is a professional Egyptian football club associated with the Egyptian Football Association
2. The Egyptian Football Association (the “Respondent” or “EFA”) is the governing body of football in Egypt and is affiliated with the Fédération Internationale de Football Association (“FIFA”)

II. FACTUAL BACKGROUND

3. Below is a brief summary of the main facts and allegations based on the Parties’ written submissions, the CAS file and the content of the hearing that took place by video-conference on 17 November 2021. Additional facts and allegations found in the Parties’ submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.
4. On 21 February 2020, the Court of Arbitration for Sport (“CAS”) issued its award in the case between, *inter alia*, the Appellant and Nogoom El Mostakabal FC (“Nogoom FC”) (CAS 2019/A/6187 & CAS 2019/A/6189; the “Initial CAS Case”) ordering the Appellant to pay Nogoom FC USD 750’000 in the context of the transfer of a football player as well as USD 500’000 as compensation for breach of a contract between the Appellant and Nogoom FC (“Initial CAS Award”).
5. On 22 February 2021, the Disciplinary Committee of the EFA (the “EFA Disciplinary Committee”) issued its decision (the “First Instance Decision”) granting the Appellant a 30-day deadline to pay the aforementioned amounts and announcing that in case of failure of the Appellant to effect payment a three-point deduction would be imposed on it.
6. On 2 March 2021, the Appellant filed an appeal against the First Instance Decision before the Appeal Committee of the EFA (the “EFA Appeal Committee”) stating that the sanction of deducting points was harsh and disproportional to the violation in question.
7. On 4 May 2021, the EFA Appeal Committee issued its decision (the “Appealed Decision”) rejecting the Appellant’s appeal and upholding the First Instance Decision.

III. PROCEEDINGS BEFORE THE CAS

8. On 23 May 2021, the Appellant filed a Statement of Appeal with the CAS challenging the Appealed Decision.
9. On 28 May 2021, the CAS Court Office forwarded the Statement of Appeal to the Respondent.
10. By letter, dated 30 May 2021, the Respondent denied jurisdiction of the CAS in the present matter. In response to the Respondent’s objection regarding jurisdiction of the CAS, the

Appellant made another submission on the same 30 May 2021 explaining that the CAS had jurisdiction and requesting the Respondent to identify the competent body for the appeal should the Respondent maintain its position that the CAS was not competent.

11. By letter of 31 May 2021, the Respondent explained to maintain its position that the Statutes of the EFA do not allow the Appellant to lodge its appeal before the CAS and that, furthermore, there is no arbitration agreement place, pursuant to which the parties would have agreed on CAS jurisdiction.
12. On 20 June 2021, and within the time limit previously extended, the Appellant submitted its Appeal Brief that also included a request for a stay of the Appealed Decision.
13. By separate letter of the same 29 June 2021, the CAS Court Office forwarded the Appellant's Appeal Brief to the Respondent granting it a time limit of 20 days to submit the Answer. In addition, the Respondent was granted a 10-day time limit to submit its comments to the request for a stay of the Appealed Decision.
14. By letter of 8 July 2021, the Respondent explained that it opposed to the request for stay of the Appealed Decision lodged by the Appellant.
15. On 14 July 2021, the Respondent filed its Answer.
16. By letter of 27 July 2021, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Division, confirmed the appointment of Dr András Gurovits as Sole Arbitrator. Moreover, the CAS Court Office informed the parties that the Appellant's request for a stay would be dealt with by the Sole Arbitrator.
17. On 29 July 2021, the Respondent requested that a hearing be held in the present case, and the Appellant requested the same by letter, dated 1 August 2021. The Appellant, in addition, requested permission to file its comments to the Respondent's argument that the CAS had no jurisdiction prior to the hearing.
18. On 4 August 2021, the Respondent made an unsolicited submission stating that it did not accept the Appellant's request to file its comments with respect to the Respondent's challenge on jurisdiction prior to the hearing.
19. By letter of 11 August 2021 the CAS Court Office informed the parties about the Sole Arbitrator's decision to grant the Appellant leave to file its comments with respect to the objection on jurisdiction raised by the Respondent. By the same letter, the CAS Court Office requested the Appellant to submit a certified English translation of relevant parts of the EFA Statutes.
20. On 17 August 2021, the Appellant filed its comments to the Respondent's objection to the CAS jurisdiction, together with an English translation of Articles 44 to 46 of the EFA Statutes.

21. By letter of 19 August 2021, the CAS Court Office granted the Respondent a 7-day time-limit to provide its rejoinder.
22. On 25 August 2021, the Respondent submitted its rejoinder.
23. On 27 September 2021, the CAS Court Office sent the parties the Sole Arbitrator's Order on Request for Provisional Measures dismissing the Appellant's request for a stay of the Appealed Decision.
24. By letter of 29 September 2021, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing.
25. By letter, dated 16 November 2021, the Appellant returned the signed Order of Procedure, while the Respondent did not return the Order of Procedure.
26. On 17 November 2021, a hearing was held by means of video-conference. The Sole Arbitrator was assisted by Mr Giovanni Maria Fares, Counsel to the CAS. In addition, the following persons attended the hearing:
 - i. for the Appellant: Mr Nasr Eldin Azzam (Counsel).
 - ii. for the Respondent: Mr Mohamed El Shawarby (Member of the board of the Respondent); Mr Mohamed Eltobgy (Counsel).
27. At the opening of the hearing, both Parties confirmed that they had no objections to the composition of the Panel. During the hearing, the Parties made submissions in support of their respective cases. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.
28. After the hearing, on 22 November 2021, the CAS Court Office granted the Appellant a time limit of seven days to submit a post-hearing brief addressing specific issues selected by the Sole Arbitrator.
29. The Appellant submitted its post-hearing brief on 29 November 2021, which the CAS Court Office forwarded to the Respondent on 30 November 2021, granting the latter a time limit of seven days to file its post-hearing brief.
30. By letter of 6 December 2021, the Respondent submitted its post-hearing brief, which the CAS Court Office forwarded to the Appellant on 6 December 2021 granting it a time limit of three days to file a short rebuttal.
31. After having been granted an extension, the Appellant submitted its rebuttal on 13 December 2021, which the CAS Court Office forwarded to the Respondent on the same day granting it a six-day deadline to file its short rebuttal.

32. On 19 December 2021, the Respondent filed its rebuttal.

IV. THE POSITIONS OF THE PARTIES

33. From the outset, the Respondent has argued that CAS has no jurisdiction in the case at hand. The Sole Arbitrator will, therefore, first focus on the question as to whether or not CAS has jurisdiction in the present case.

34. The following is a summary of the Parties' written and oral submissions in respect of the jurisdiction of the CAS and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the question of jurisdiction. Should the Sole Arbitrator determine that CAS does have jurisdiction to hear the present Appeal, the Parties' further positions as to the merits of the dispute will be discussed below.

A. THE APPELLANT: ISMAILY SPORTING CLUB

35. In its Statement of Appeal, the Appellant submitted the following requests for relief:

"1. To accept this appeal against the Decision of the EFA decision that was notified to the Appellant on 04 May 2021.

2. To adopt an award annulling appealed decision and declaring that:

2.1 The appealed decision of disciplinary sanction imposed by EFA against Ismaily is null and void.

2.2 Alternatively, should any sanction be imposed, it shall not exceed the sanction of banning the Appellant from signing new players according to the regulations and all similar cases decided by EFA.

2.3 Awarding any such other relief as the Panel may deem necessary or appropriate".

36. In its Appeal Brief the Appellant slightly amended its prayers for relief and requested the following:

"i) To accept the Club's Appeal

ii) To establish that the Respondent's Appealed Decision violated the rules, regulations, and the long jurisprudence of the FIFA and the CAS.

iii) To establish that the sanction in the Appealed Decision (deducting three points from the Appellant) shall be dismissed and cancelled.

iv) Alternatively, to rule that the sanction in the Appealed Decision (deducting three points) shall be amended and replaced with a ban from registering new players".

37. In support of its position that the CAS has jurisdiction, the Appellant has submitted, in essence, the following:
38. The CAS has jurisdiction by virtue of Articles 57 and 58 of the FIFA Statutes and Article R47 et seq. of the Code of Sports-related Arbitration (the "CAS Code"). The Appellant, further relied on Article 45 para. 3 and Article 46 of the EFA Statutes. These provisions read, according to the translation provided by the Appellant, as follows:

Article 45, para. 3, of the EFA Statutes:

"A committee shall be formed within the Association to settle disputes and challenging its decisions shall be before the Sports Settlement and Arbitration Center at the Egyptian Olympic Committee, or the International Dispute Resolution Committee of the (FIFA), or before the Court of Arbitration for Sport (CAS).

The approval of the General Assembly on this regulation shall be considered as an acceptance of the dispute resolution mechanism before the Egyptian Sports Settlement and Arbitration Center stipulated in the Sports Law No. (71) of 2017 after this condition has been set out in the membership forms, contracts and agreements concluded by the Association".

Article 46 of the EFA Statutes:

"1. Under the FIFA Laws, any appeal against a FIFA final and binding decision shall be heard before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.

2. The Court of Arbitration for Sport shall not hear appeals for violations of the Laws of the Game or a decision imposing sanction within a limit of four matches, a three-month suspension, or any independent decisions ratified by an arbitration court under the authority of an association or confederation.

3. The Association shall comply with the commitment binding on it and its members, players, officials and match agents, to any final decision ratified by FIFA or the Court of Arbitration for Sport".

39. As the EFA Statutes provide for the jurisdiction of the CAS it is not necessary for the parties to enter into any arbitration agreement, in accordance with which they would agree on the jurisdiction of the CAS.
40. In the Initial CAS Case the jurisdiction of the CAS was accepted by virtue of Article 46 of the EFA Statutes.
41. The Appellant would be willing to withdraw the present appeal if the Respondent confirmed that the CAS has no jurisdiction to hear the present appeal or any other direct appeal against any previous decisions of the EFA Appeal Committee before the parties have appealed with the EFA Sports Settlement and Arbitration Center in accordance with the EFA Statutes and, thus, confirmed that the Appellant has the right to appeal the decision of the EFA Appeal Committee of 11 February 2019 that triggered the Initial CAS Award. If the Respondent, however, did not confirm the foregoing it would have to be considered as admitting the jurisdiction of the CAS in the present appeal.
42. The CAS had jurisdiction to hear the Initial CAS Case between the same parties and rendered the Initial CAS Award sanctioning the Appellant. If the CAS had jurisdiction in that case it shall also have jurisdiction in the present case.

B. THE RESPONDENT: EGYPTIAN FOOTBALL ASSOCIATION

43. In its Answer the Respondent submitted the following requests:

"In view of the above the respondent requests to adopt an award declaring that the non-acceptance of the case.

Hence, the respondent requests the non-acceptance of this appeal, the respondents requests as well that the charges and the costs of the appeal are to be borne by the appellant".

44. In support of its position that the CAS has no jurisdiction the Respondent has submitted, in essence, the following:
45. The EFA Statutes do not provide for the jurisdiction of the CAS in the present case. In addition, no arbitration agreement is in place, pursuant to which the parties would have agreed on the jurisdiction of the CAS.

46. The Appellant, thus, errs when it contends that the Statutes of the Respondent authorize the Appellant to lodge its appeal directly before the CAS.
47. The Appellant did not properly translate Article 45 para. 3 of the EFA Statutes. Article 45 of the EFA Statutes must rather be translated as follows:

"A committee shall be formed within the Association to settle the disputes; its decisions shall be appealed before the Sports Settlement and Arbitration Center of the Egyptian Olympic Committee, and then the FIFA Dispute Settlement Committee and after that the International Court of Arbitration for Sport (CAS).

The approval of the General Assembly on this regulation shall be deemed to be the acceptance of the dispute settlement mechanism before the Egyptian Sports Settlement and Arbitration Center stipulated in the Sports Law No.: (71) of 2017 after this requirement is set in thje membership forms, contracts and agreements concluded by the Association".

48. The EFA Statutes do, thus, not authorize any party to directly file an appeal before the CAS. The CAS is rather considered the last instance and is only competent if, before, the case has been heard by the Sports Center for Settlement and Arbitration of the Egyptian Olympic Committee.
49. The Appellant did not proceed in line with the EFA Statutes as it omitted to file its appeal with the Sports Center for Settlement and Arbitration of the Egyptian Olympic Committee.
50. The Appellant also disregarded the Egyptian law on sport no. (71) that provides for the requirement to appeal before the Sports Center for Settlement and Arbitration. Article (66) of said law dealing with Sports Disputes Settlement provides that

"An independent center called 'Egyptian sports settlement and arbitration center' shall be established at the Egyptian Olympic committee, which shall have a jurisdictional personality, and shall be responsible for sports disputes settlement arising from the provisions application of this law, which one of its Parties is a person, bodies or entity subject to the provisions of this law, through mediation, conciliagtion or sports arbitration".

51. The inaccuracy in the Appellant's translation of Article 45 para. 3 EFA Statutes is relevant for the outcome of the assessment of the jurisdiction of the CAS. By contrast to what the Appellant contends, the EFA Statutes would have required that Appellant to file its appeal first before the Sports Center for Settlement and Arbitration, then, in a second step, before the dispute resolution committee of FIFA and only after that, in a third step, before the CAS. The relevant word between the various instances listed in Article 45 para. 3 of the EFA Statutes is not "or", but rather "then" and "after that".

52. The Respondent was no party to the Initial CAS Case. The findings of the CAS regarding jurisdiction in that case are not relevant for the present case.

V. ADMISSIBILITY

53. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”

54. The EFA Statutes do not provide for another deadline for the filing of the appeal that would deviate from the one set out in Article R49 of the Code.
55. The Appealed Decision was communicated to the Appellant on 4 May 2021, and the Appellant's Statement of Appeal was filed on 23 May 2021, i.e. within the 21 day-deadline set out in Article R49 of the Code.
56. The Appeal Brief was sent to the CAS Court Office on 20 June 2020. As on 14 June 2021, the CAS Deputy Division President had granted the Appellant with a final extension of the time-limit to submit its Appeal Brief of seven days, the Appellant did timely file the Appeal Brief.
57. Against this background, the Sole Arbitrator concludes that the present appeal is admissible.

VI. JURISDICTION OF THE CAS

58. Given that the appeal is, in principle, admissible it must, in a next step, be assessed whether the parties had actually agreed that the appeal against the Appealed Decision may be lodged with the CAS.
59. The present procedure is an international arbitration proceedings in accordance with the 12th chapter of the Swiss Private International Law Act ("PILA"). In accordance with Art. 176 para. 1 of the PILA, the provisions of the 12th chapter apply to arbitral tribunals with seat in Switzerland, provided that at the time when the arbitration agreement was concluded at least one party's domicile or ordinary residence was not in Switzerland. This condition is fulfilled in the present case. Both parties were domiciled in Egypt, thus not in Switzerland. None of the parties has argued otherwise.

60. In accordance with Art. 178 para. 1 of the PILA, the arbitration agreement must be made in writing or any other means of communication allowing it to be evidenced by text. As regards the substance of an arbitration agreement, Art 178 para. 2 of the PILA provides that an arbitration agreement is valid if it conforms either to the law chosen by the parties, to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or to Swiss law. The parties have not argued that the requirements under Egyptian Law in respect of validity of an arbitration agreement are less strict than those under Swiss law. This question will, thus, be reviewed on the basis of the principles developed and confirmed by the Swiss Federal Tribunal (cf. Swiss Federal Tribunal, decision 4A_388/2012, no. 3.4.1).
61. An arbitration agreement is an agreement pursuant to which the parties agree to have existing and/or future disputes resolved by an arbitral tribunal in accordance with the relevant procedural provisions, thus excluding the competence of the state courts (cf. Swiss Federal Tribunal, decision 4P_162/2003, no. 3.1). It is decisive that the parties express their will to confer jurisdiction to a court of arbitration rather than a state court (cf. Swiss Federal Tribunal, decision 4A_246/2011, no. 2.2.3). Neither of the parties argued that the parties had, indeed, entered into a (bilateral) arbitration agreement conferring jurisdiction to the CAS. In addition, the Sole Arbitrator could not establish existence of any such (bilateral) arbitration agreement.
62. The Appellant, however, submits, that the arbitration clause contained in Article 45 para. 3 of the EFA Statutes is valid and applicable in the case at hand and confers jurisdiction to the CAS.
63. The Swiss Federal Tribunal confirmed on many occasions that jurisdiction may also be conferred to an arbitral tribunal based on an arbitration clause contained in the statutes of an association. This jurisprudence has recently been codified in Swiss statutory law and Article 178 para. 4 of the PILA, in force since 1 January 2021, now expressly provides that the provisions on international arbitration apply by analogy to an arbitration clause set out in articles of association or statutes of an association.
64. Having established that an arbitration clause set out in the statutes of an association, or sports governing body, respectively, can, in principle, confer jurisdiction to a court of arbitration such as the CAS, the Sole Arbitrator moved on to analyze the content of Article 45 para. 3 of the EFA Statutes in order to assess whether the CAS has, indeed, competence in the case at hand.
65. In doing so, the Sole Arbitrator noted that if the translation of Article 45 para. 3 provided by the Appellant was accurate the CAS would, indeed, have jurisdiction as in that case the Appellant would have had the option to choose among various channels of appeal, one of them being an appeal before the CAS. On the other hand, he noted that according to the translation of Article 45 para. 3 of the EFA Statutes provided by the Respondent, the CAS would not have jurisdiction as in such case the Appellant should first have submitted an appeal with the Sports Settlement and Arbitration Center of the Egyptian Olympic Committee, instead of lodging its appeal directly with the CAS.

66. The Sole Arbitrator also considered the Appellant's argument that the CAS had jurisdiction in the Initial CAS Case between the the Appellant, Nogoom FC and the Respondent. In respect of the Respondent's argument that it was no party to those proceedings, the Sole Arbitrator, however, noted that the Respondent was, indeed, a party to the Initial CAS Case. The award in the Initial CAS Case (CAS 2019/A/6187 & CAS 2019/A/6189) clearly indicates that, *inter alia*, Nogoom FC, the Appellant and the Respondent parties to said arbitration.
67. Para. 71. of the Initial CAS Award stated that with "*respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 46 of the EFA Bylaws, stating that 'in accordance with the FIFA Laws, any challenge against a final and binding decision shall be submitted to the Court of Arbitration for Sport' "*.
68. In addition, para. 72 of the Initial CAS Award stated that "*pursuant to clause 11 of the Tripartite Contract, 'any dispute shall be referred to the EFA and its decision shall be final, then it shall be referred to FIFA' "*. Para. 73 provided, in addition, that "*none of the Parties objected to the jurisdiction of the CAS, and Nogoom, Ismaili and EFA confirmed the CAS jurisdiction by signing the Order of Procedure*".
69. While the Sole Arbitrator noted that the Initial CAS Case had not previously been brought before FIFA as the tripartite agreement, mentioned in the Initial CAS Award, would have suggested, the parties to the Initial CAS Case had apparently accepted jurisdiction of the CAS by (i) not objecting to that arbitration proceeding and (ii) by signing the Order of Procedure that confirmed the jurisdiction of the CAS.
70. The Sole Arbitrator, thus, noted that the facts in the Initial CAS Case were different from those in the present proceedings in that in CAS 2019/A/6187 & CAS 2019/A/6189 the Appellant, the Respondent (and Nogoom FC) had agreed on CAS jurisdiction by not objecting to the arbitration procedure before the CAS and by signing the Order of Procedure, which expressly held that the CAS had jurisdiction. In the case at hand, however, the Respondent objected to the CAS' jurisdiction from the outset and, further, did not sign the Order of Procedure.
71. The mere fact that the Respondent accepted jurisdiction of the CAS in the Initial CAS Case does not, in the Sole Arbitrator's opinion, indicate that by doing so the Respondent would have accepted jurisdiction of the CAS in any future arbitration involving the Appellant and the Respondent. The Appellant did not provide any evidence that would indicate otherwise.
72. Against this background, the Sole Arbitrator holds that the question as to whether or not the CAS has jurisdiction is to be determined solely on the basis of the EFA Statutes, without the Sole Arbitrator being bound by the Initial CAS Award.
73. In this context it is important to note that the translations submitted by the parties of Article 45 para. 3 of the EFA Statutes, which appears to be the pertinent provision in the case at hand, differ. If the version provided by the Appellant was accurate, the CAS would have

jurisdiction; if the version provided by the Respondent prevailed, the CAS would not have jurisdiction.

74. Having that in mind the Sole Arbitrator also considered the statements made by the parties during the hearing. And, indeed, during the hearing the Appellant explained that it would no longer object to the translation provided by the Respondent. The Sole Arbitrator then recalled that the version provided by the Respondent states that

"A committee shall be formed within the Association to settle the disputes; its decisions shall be appealed before the Sports Settlement and Arbitration Center of the Egyptian Olympic Committee, and then the FIFA Dispute Settlement Committee and after that the International Court of Arbitration for Sport (CAS)" (emphasis added).

75. Given that, finally, the Appellant confirmed accuracy of the translation provided by the Respondent and, thus, confirmed that an appeal with the CAS could have been lodged only after having appealed before the Sport Settlement and Arbitration Center (and then probably with FIFA), the position of the Respondent prevails.
76. Finally, the Sole Arbitrator holds that Article 46 of the EFA Statutes are not pertinent in the case at hand as it deals with appeals against decisions of FIFA, and not of the EFA.
77. Against this background, the Sole Arbitrator concludes that there is no arbitration agreement or arbitration clause in place that would have entitled the Appellant to lodge its appeal against the Appealed Decision directly with the CAS. Therefore, the CAS is not competent to hear the present case.

VII. MERITS

78. As the CAS is not competent, the merits of this case are not to be discussed any further.

VIII. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide the Appeal filed by Ismaili Sporting Club on 23 May 2021.
2. (...).

3. (...).

4. All other motions and prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 February 2023

THE COURT OF ARBITRATION FOR SPORT

Dr András **Gurovits**

Sole Arbitrator