

4A_620/2015¹

Judgment of April 1, 2016

First Civil Law Court

Federal Judge Kiss (Mrs.), Presiding

Federal Judge Kolly

Federal Judge Niquille (Mrs.)

Clerk of the Court: Mr. Carruzzo

X. _____,

Represented by Mr. Gérard Montavon and Mr. Gaétan Droz,
Appellant

v.

Fédération Internationale de Football Associations (FIFA),

Represented by Mr. Christian Jenny,
Respondent

Facts:

A.

X. _____ (hereafter: the Football Player) is a [citizenship omitted] professional football player. The Fédération Internationale de Football Associations (FIFA) is the governing body of football at the global level. A provision of the Regulations on the Status and Transfer of Players (RSTP) adopted by FIFA – reproduced in a regulation of the French Professional Football League (PFL) – states that a player may be registered with a maximum of three clubs during one season (in the case at hand, during the period between July 1 of one year and June 30 of the following year) and that during this period, he may play on behalf of only two clubs in official games.

¹ Translator's Note:

Quote as X. _____ v. FIFA. _____ SA, 4A_620/2015.

The decision was issued in French. The full text is available on the website of the Federal Tribunal, www.bger.ch

Pursuant to a contract signed in August 2010 with B._____, an English professional football club, the Football Player played one game with the club on August 25, 2014, on the under-21 team (U21 PDL). Loaned to another English professional club (C._____) from September 2, 2014, to January 1, 2015, he participated in several games of the Premier League championship on behalf of this second team. On January 2, 2015, the Football Player and B._____ mutually agreed to terminate their contract. The following day, the French professional club D._____ and the Football Player signed a contract expiring at the end of the 2014/2015 season. On January 6, 2015, D._____ submitted the contract to the PFL for approval. On January 15, 2015, the Legal Committee of the PFL decided, on the one hand, to ask the French Football Federation (FFF) to seize the FIFA Players' Status Committee (PSC) of FIFA officially with a view to having it rule as to the official nature of the U21 PDL game in which the Football Player participated within the meaning of the aforesaid provision of the RSTP; and, on the other hand, to stay the approval of the contract in the mean time. The FFF did so on January 20, 2015; furthermore, on January 26 of the same month, it sent a brief from counsel for the Football Player to the Single Judge of the PSC.

On January 28, 2015, the Single Judge issued a decision containing the following operative part:

The game played in [*name of country omitted*] in the framework of the U21 Professional Development League must be considered as 'official games' within the meaning of the Regulations on the Status and Transfer of Players.

Whereupon the Legal Committee of the PFL issued a decision on January 30, 2015, by which it approved the contract concluded by D._____ and the Football Player on January 3, 2015, whilst pointing out that the latter, although qualified, was not authorized to play any official games on behalf of his new club before the end of the 2014/2015 season, namely until June 30, 2015.

The Football Player did not appeal this decision.

B.

On February 19, 2015, the Football Player seized the Court of Arbitration for Sport (CAS) with an appeal against the decision of the Single Judge of the PSC of January 28, 2015. In substance, he sought a finding that the disputed provision of the RSTP could not be applied to him and consequently that the decision challenge be annulled.

A three-member Panel was constituted by the CAS to decide the appeal. The Appellant challenged its president. In a decision of April 27, 2015, the Board of the International Council of Arbitration for Sport (ICAS) rejected the challenge.

After hearing the case, the Panel rejected the appeal on September 18, 2015, confirmed the decision under appeal, ordered the Football Player to pay the costs of the arbitral proceedings, and let each party pay its own costs. In short, it found that the Appellant had no standing or interest to challenge a decision that did

not apply to his particular case but merely interpreted a regulation, particularly since the decision was issued at the end of a procedure to which he was not a party and which, in contrast to the decision of the legal committee of the PFL which he had not appealed, could not impact his interests, *i.e.*, deprive him temporarily of the opportunity to carry out his profession as a professional football player.

C.

On November 9, 2015, the Football Player (hereafter: the Appellant) filed a civil law appeal to the Federal Tribunal with a view to obtaining the annulment of the aforesaid award and the removal of the president of the Panel.

In its answer of January 18, 2015, the CAS produced its file and submitted that the matter was not capable of appeal and, in the alternative, that it should be rejected.

FIFA (hereafter: the Respondent) submitted that the appeal should be rejected insofar as the matter is capable of appeal at the outset of its January 22, 2016, answer.

In his reply of February 8, 2016, the Appellant, and in its rejoinder of February 25, 2016, the Respondent maintained their respective submissions.

Reasons:

1.

The Federal Tribunal reviews freely and *ex officio* the admissibility of the appeals it receives (ATF 140 IV 57 at 2, p. 59 and the cases quoted) which implies, in particular, a review of the standing to appeal.

1.1. According to Art. 76(1)(b) LTF,² the Appellant must have an interest worthy of protection to the annulment of the decision under appeal. The interest worthy of protection is the practical usefulness that the Appellant would derive from his appeal being admitted, preventing him from economic, moral, material or other injury which the decision under appeal would cause him (ATF 137 II 40 at 2.3, p. 43). The interest must be present, namely it has to exist not only at the time the appeal is filed but also when the judgment is issued (ATF 137 I 296 at 4.2, p. 299; 137 II 40 at 2.1, p. 41). The Federal Tribunal finds that the matter is not capable of appeal when the interests worthy of protection fails at the time the appeal is filed. However, if the interest disappears during the proceedings, the appeal becomes moot (ATF 137 I 23 at 1.3.1, p. 24 *f.* and the cases quoted).

² Translator's Note:

LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

1.2. Without being contradicted, the CAS points out at n. 5 of its answer that the Appellant was qualified to play with D._____ as of July 2015, and that he has been playing with his club regularly since then. Leaving that remark aside, the very application of the pertinent regulation to the circumstances of the case shows that the provision, no matter what its correct interpretation may be, ceased to have effect as of June 30, 2015, *in casu* because at that time, the Appellant was party to a contract with D._____ only and no longer played for his former clubs, namely B._____ and C._____. This being so, one does not see what practical specific and present interest the Appellant could claim today in obtaining the annulment of the award. Such interest is even less discernable because the decision under appeal in the award was of a general and abstract nature since it merely sought to determine whether the games played in the framework of the U21 PDL should be considered as official games within the meaning of the aforesaid regulation. The existence of such an interest may also be rejected here because it is not the decision of the Single Judge appealed to the CAS which temporarily prevented the Appellant from delivering his contractual service to his new employer, D._____, but rather the decision of the Legal Committee of the PFL of January 30, 2015, left intact by the Appellant, that deprived him of the right to participate in any official game on behalf of his new club until June 30, 2015.

Neither does the Appellant show which residual interest(s) he may have in the annulment of the CAS award. In this respect, his reference to the judgment 4A_604/2010³ of April 11, 2011, is not relevant at all because the factual circumstances of the aforesaid case had nothing in common with the case at hand (see judgment quoted at 1.2, paragraph before last). Admittedly, the Appellant claims that the circumstances in which he found himself, unable to provide his services to his employer for several months, caused him “financial, moral, and reputational damages,” compensation for which he may seek – including from the Respondent – in the framework of a liability claim once the decision of the Single Judge is annulled. Yet, this is a mere allegation devoid of any evidence. Similarly, the Panel pointed out that the Appellant failed to explain specifically “*in what manner the annulment of the decision of the Single Judge would impact him financially or in sport*” (award, n. 59). Moreover, the potential to seek compensation later for the damage his allegedly unlawful temporary ban from a number of official games would have caused him, does not in itself create an interest worthy of protection; moreover, the decision under appeal could not be invoked against him in a possible future claim for damages (judgment 4A_134/2012, of July 16, 2012, at 2.2 and the cases quoted).

The foregoing shows that the Appellant no longer has a present interest to obtain the annulment of the award under appeal and that such an interest no longer existed even at the time when he filed his appeal.

Furthermore, the conditions to which federal case law submits the admissibility of an appeal against the decision concerning the costs when the matter is otherwise not capable of appeal are not met in the case at hand (see judgment 4A_134/2012, quoted above, at 3).

³ Translator’s Note:

The English translation of this decision is available here:

<http://www.swissarbitrationdecisions.com/form-of-the-appeal-to-federal-tribunal-legal-interest-to-appeal->

It must therefore be found that the matter submitted to this Court is not capable of appeal.

2.

The costs of the federal proceedings shall be borne by the Appellant, pursuant to Art. 66(1) LTF. The Respondent is entitled to costs (Art. 68(1) and (2) LTF).

Therefore the Federal Tribunal pronounces:

1.

The matter is not capable of appeal.

2.

The judicial costs set at CHF 5'000 shall be borne by the Appellant.

3.

The Appellant shall pay an amount CHF 6'000 to the Respondent for the federal proceedings.

4.

This judgment shall be notified to the representatives of the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, April 1, 2016

In the name of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:

Clerk:

Kiss (Mrs.)

Carruzzo

Title: *No appeal without a specific interest to the annulment of the award*

Keywords: *Legal interest to act before the Federal Tribunal*

Stars: *