



**Arbitration CAS 2007/A/1329 Chiapas F.C. v/ Cricuma Esporte Clube & CAS 2007/A/1330 Chiapas F.C. v/ R., award of 5 December 2007**

Panel: Prof. Massimo Coccia (Italy), President; Mr. Ricardo de Buen Rodríguez (Mexico); Mr. José María Mesalles Mata (Spain)

*Football*

*Disciplinary sanction against a club*

*Standing to be sued*

*Summoning of the wrong respondent*

- 1. Under Swiss law, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. The FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA, i.e. full compliance with the decisions rendered by its bodies. Indeed, the appeals against the decisions of the disciplinary bodies regard only the existence of a disciplinary infringement under FIFA rules, the power of FIFA to impose sanctions and the appropriateness and proportionality of such FIFA sanctions. Therefore, as the appellant(s) is/are seeking something only against FIFA and the relief requested affects FIFA only, only FIFA has standing to be sued in such appeals brought before CAS.**
- 2. The attempt to shift the arbitration proceedings from an initial respondent to a new respondent must be construed, from a legal standpoint, as the filing of a new appeal altogether. In other words, the request contained in the appeal brief and directed against the new respondent must in fact be considered as a new statement of appeal leading to a new and different arbitration procedure.**

These two appeals to the Court of Arbitration for Sport (CAS) arise out of the same basic facts, have been filed at the same time by the same Appellant, and have been examined together by the same Panel. Although they have been examined together, the Panel has considered each case separately, and has come to a decision on the facts of that appeal. In compliance with the principle of procedural economy, and for the sake of convenience and simplicity, the Panel is issuing one Award in relation to the two appeals.

Chiapas Futbol Club S.A. de C.V. (“Chiapas” or the “Appellant”) is a Mexican club competing in the Mexican first division championship.

Cricuma Esporte Clube (“Cricuma”) is a Brazilian football club.

R. (or the “Player”) is a Brazilian football player born on 8 June 1980.

The Fédération Internationale de Football Association (FIFA) is the governing body of international football, constituted as an association under Swiss law and having its headquarters in Zurich, Switzerland.

On 30 May 2007 the FIFA Disciplinary Committee (the “DC”) issued two disciplinary decisions (the “DC Decisions”) imposing sanctions on the Appellant for not having complied with two FIFA judgments, both subsequently affirmed by the CAS (cases CAS 2005/A/959 and CAS 2006/A/1117).

The two DC Decisions were rendered on the basis of Article 71 of the FIFA Disciplinary Code, adopted on 15 September 2006 and in force since 1 January 2007, providing for sanctions on *“anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA”*.

The two DC Decisions outlined the following circumstances:

- On 28 July 2005, the FIFA Dispute Resolution Chamber (the “DRC”) decided that Chiapas had to pay USD 98,500 plus interest at 5% per annum to the Brazilian player R.
- On 15 February 2006, the Single Judge of the FIFA Players Status Committee (the “Single Judge”) decided that Chiapas had to pay USD 300,000 plus interest at 5% per annum to the Brazilian club Cricuma.
- Chiapas appealed to the CAS against both FIFA decisions.
- On 12 February 2007, a CAS Panel issued an award which affirmed both FIFA decisions.
- On 24 April 2007, the DC opened disciplinary proceedings against Chiapas for not having fully complied with the above judgments.
- On 4 May 2007, Chiapas requested a grace period of 90 days to comply with the decision of the Single Judge.
- On 18 May 2007 the secretariat of the Disciplinary Committee informed the parties that the case would be dealt with at the DC’s meeting of 30 May 2007 and fixed 28 May 2007 as the last deadline to pay the arrears.
- Chiapas did not pay all the arrears within the provided deadline.

Therefore, the DC held essentially as follows:

- Chiapas violated Article 71 of the FIFA Disciplinary Code because it failed to comply with the FIFA decisions imposing the payment of its debts vis-à-vis Cricuma and the Player.
- Accordingly, Chiapas must pay an appropriate fine, taking into account the fact that non-payment of overdue amounts can cause financial difficulties to the Player and to Cricuma.

- Chiapas is thus ordered to pay CHF 15,000 for not having fully paid the Player and a fine of CHF 20,000 for not having fully paid the Club within 30 days of notification of the decisions.
- Chiapas is granted a final grace period of 30 days to pay its debts; otherwise, upon the creditors' request, the DC is to inflict a deduction of six points in the Mexican first division championship.
- If after the deduction of points the payment is not made, Chiapas is to be immediately relegated to the lower division.

On 22 June 2007, the DC Decisions were notified to the parties stating that, according to Article 71, paragraph 5, of the FIFA Disciplinary Code and Article 61, paragraph 1, of the FIFA Statutes, they had the right to file an appeal before the CAS within 21 days of notification.

On 13 July 2007, Chiapas lodged two statements of appeal with the CAS against the DC Decisions. In the first statement of appeal (case CAS/A/1329), Chiapas summoned Cricuma as the only Respondent in the appeal arbitration procedure. In the second statement of appeal (case CAS/A/1330) Chiapas summoned R. as the only Respondent in the appeal arbitration procedure.

On 17 July 2007, the CAS Court Office wrote to the two Respondents, sending them the two statements of appeal. The Respondents, however, did not file any answer within the deadline set forth by Article R53 of the CAS Code of Sports-related Arbitration (the "CAS Code").

On 17 July 2007, the CAS Court Office informed FIFA of the appeals filed by Chiapas, pointing out that they were not directed against FIFA and asking whether FIFA intended anyway to intervene as a party in the arbitration pursuant to articles R54 and R41.3 of the CAS Code.

On 19 July 2007, FIFA wrote to the CAS, stating as follows: "*FIFA renounces its right to intervene in the present arbitration proceedings*".

On 24 July 2007, the Appellant filed the appeal briefs asking the CAS to uphold the appeals and annul the decisions issued by the DC. At the outset of its appeal briefs, the Appellant stated as follows: "*Based on the last paragraph of article R38 of the CAS statutes, we confirmed that the respondent in this appeal is the Federation Internationale de Football Association (FIFA) Disciplinary Committee*". In other words, the Appellant requested that the Respondents be changed for both cases, with FIFA substituting for the Player and Cricuma.

On 26 July 2007, the CAS informed FIFA of the above procedural twist, asking whether FIFA accepted to be named as Respondent. On 28 July 2007, FIFA replied that it refused to be named as Respondent.

As to the merits of the appeal, the Appellant alleged that the Player and Cricuma had been fully paid on 12 July 2007 and that the club had financial difficulties. According to the Appellant, since the Respondents had been paid "*into the period of 90 days asked to the Disciplinary Committee in order to make*

*the payment ... in the terms that the CAS order to us*”, and considering the “*precarious economic situation due to fiscal problems*”, the CAS should declare that the fines imposed by the DC Decisions are not due.

In accordance with Article R57 of the Code, after having consulted the parties, the Panel decided not to hold a hearing in this case. The present award is therefore rendered after consideration of the written documents on file.

## LAW

### Jurisdiction

1. The jurisdiction of the CAS to decide the present appeals, which is undisputed, derives from Articles R47 of the CAS Code and Articles 60-61 of the FIFA Statutes.
2. It follows that the CAS has jurisdiction to decide the present dispute.

### Respondents' lack of standing to be sued

3. Under Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (*légitimation passive*) if it is personally obliged by the “disputed right” at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192).
4. In the statements of appeal, the Appellant named as Respondents Cricuma and R., i.e. the club and the player who had been parties to the previous financial cases. Those two cases terminated on 12 February 2007 with the CAS judgment affirming the FIFA decisions. No further action before the Swiss Federal Tribunal was pursued. The ensuing FIFA disciplinary proceedings before the DC concerned only the consequences for Chiapas of not complying with the FIFA and CAS decisions.
5. The Panel notes that:
  - (a) R. and Cricuma were not parties to the FIFA disciplinary proceedings leading to the appealed DC Decisions and are not affected by those decisions;
  - (b) the Appellant is not claiming anything against R. and Cricuma nor seeking anything from them.

6. The FIFA disciplinary proceedings, in the Panel's view, are primarily meant to protect an essential interest of FIFA, i.e. full compliance with the decisions rendered by its bodies. Indeed, the appeals brought in these proceedings against the DC Decisions regard only the existence of a disciplinary infringement by Chiapas under FIFA rules, the power of FIFA to impose sanctions and the appropriateness and proportionality of such FIFA sanctions. In other words, the Appellant is seeking something only against FIFA and the relief requested affects FIFA only.
7. Therefore, only FIFA, and not R. and Cricuma, could be considered as the legitimate respondent to the appeals brought before this Panel. In other words, R. and Cricuma do not have standing to be sued (*légitimation passive*) and cannot be summoned as respondents in the present arbitration.
8. Accordingly, the Panel finds that the Appellant erred in summoning R. and Cricuma as Respondents because they lack standing to be sued in connection with this case. As a result, the Panel holds that the Chiapas' appeals brought against R. and Cricuma are inadmissible.

#### **Late summoning of FIFA**

9. In the appeal briefs submitted on 24 July 2007, the Appellant – probably realizing the previous procedural mistake – attempted to summon FIFA as respondent in these arbitration proceedings instead of R. and Cricuma (see *supra*).
10. In the Panel's view, the Appellant's attempt to shift the arbitration proceedings from the two initial Respondents to a new respondent must be construed, from a legal standpoint, as the filing of a new appeal altogether. In other words, the request contained in the appeal briefs and directed against FIFA must in fact be considered as a new statement of appeal leading to a new and different arbitration procedure, against FIFA this time.
11. The Panel is of the opinion that the Appellant's summoning of FIFA as the new respondent could be admissible only if it had been made within the 21-day time limit provided by art. 61.1 of the FIFA Statutes. However, the Panel notes that the two DC Decisions were notified on 22 June 2007 and that, therefore, the time limit to lodge the appeal lapsed on 13 July 2007. As a result, the appeal filed against FIFA on 24 July 2007 was not on time.
12. The Appellant tried to justify its late naming of FIFA as a respondent by invoking the last paragraph of art. R38 of the CAS Code. However, art. R38 is applicable to the ordinary arbitration procedure and not to the appeal arbitration procedure, so it's of no help to the Appellant. The Panel remarks, however, that probably the Appellant meant to refer to art. R48 of the CAS Code, which applies to the appeal arbitration procedure and whose content is analogous to that of art. R38.

13. Art. R48 of the CAS Code sets forth the requirements of the statement of appeal, including therein “*the name and full address of the Respondent*” and, in the last paragraph, provides as follows:  
*“If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office shall grant once only a short deadline to the Appellant to complete his statement, failing which it shall be deemed withdrawn”.*
14. In the Panel’s view, the above quoted provision is meant to help the appellants when they fail to provide some of the elements of their statement of appeal but it is not meant to cure a major procedural mistake such as that of the Appellant’s. Indeed, if an appellant forgets to specify a respondent, the CAS Court Office will ask the appellant to provide such name within a short deadline, in order to be able to notify the statement of appeal to the named respondent.
15. However, once an appellant does name a respondent, even if it’s the wrong respondent, the CAS Court Office must register such respondent’s name into the CAS docket and summon it into the proceedings. This means that the arbitration procedure has been set in motion and that the summoned party has the opportunity to appear before the CAS, in particular to claim its lack of standing to be sued and ask for legal costs, or else it may risk that the Panel does not recognize its right not to be involved in the arbitration.
16. In other words, in the Panel’s opinion, the CAS Court Office has no duty and no power to check whether an appellant has named the right respondent and, hence, art. R48 cannot be invoked by the appellant in such a situation. It is up to the appointed Panel to examine the file and determine whether the summoned respondent lacks standing to be sued.

## **Conclusion**

17. Based on the foregoing, the Panel finds that the appeals brought by the Appellant against R. and Cricuma with respect to the DC Decisions are inadmissible *ratione personae*, while the appeal subsequently brought by the Appellant against FIFA is inadmissible *ratione temporis*. As a result, the Panel holds that the appeals must be dismissed.

## **The Court of Arbitration for Sport rules:**

1. The appeals filed by Chiapas Futbol Club S.A. de C.V. against the two decisions issued on 30 May 2007 by the FIFA Disciplinary Committee are dismissed.

(...)