

SOCCER'S BURGEONING INTERNATIONAL JURISPRUDENCE

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In 2001 the Federation Internationale de Football Association (FIFA) established a procedure for resolving disputes between clubs/national associations and players (and other officials such as coaches). Such disputes could be determined at the national or local area if there was in place a procedure determined by collective bargaining between representatives of clubs/national associations and players. In the absence of such a procedure, disputes would be resolved by FIFA's Disputes Resolution Chamber, with appeals to the Court or Arbitration for Sport (CAS) for final determination. This paper will examine two recent disputes which involved the CAS and their broader significance concerning developments within soccer of a burgeoning international jurisprudence.

On 5 July 2001 the Federation International de Football Association (FIFA), the governing body of world football, or soccer as it has traditionally been called in this country, promulgated a new set of Regulations for the Status and Transfer of Players.² Amongst other things, these Regulations introduced a mechanism to resolve disputes between a club or a national association and a player. The 2005 Regulations extended this mechanism to disputes involving coaches.³ Article 42 of the 2001 regulations stated that:

“Without prejudice to the right of any player or club to seek redress before a civil court in disputes between clubs and players, a dispute resolution and arbitration system shall be established, which ... (b) I ... will be decided by the Disputes Resolution Chamber of the FIFA Players' Status Committee or, if the parties have expressed a preference in a written agreement, or it is provided for by collective bargaining agreement, by a national sports arbitration composed of

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² FIFA Regulations Regarding the Status and Transfer of Players [5 July 2001]. Also see Regulations Governing the Application of the Regulations Governing the Status and Transfer of Players [5 July 2001], and prior to that Principles for the Amendment of FIFA Rules Regarding International Transfers [5 March 2001]. FIFA introduced a new set of regulations in December 2004, though they are referred to in the FIFA “family” as the 2005 Regulations, and has also issued various circulars which have modified and/or interpreted these regulations; see <http://fifa.com/aboutfifa/documentlibrary/legalmatters.html>. For information on the context of and evaluations of the substance of these regulations see Braham Dabscheck “The Globe at Their Feet: FIFA’s New Employment Rules-I” (2004) 7 *Sport in Society* 69–94; Braham Dabscheck “The Globe at Their Feet: FIFA’s New Employment Rules-II” (2006) 9 *Sport in Society* 1–18; and Stefan Van den Bogaert, *Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman* (2005) Kluwer Law International, The Hague.

³ Article 22 (c) 2005 Regulations, above n 2.

members chosen in equal numbers by players and clubs, as well as an independent chairman.”⁴

In October 2003, in a document entitled Regulations Governing the Application of the Statutes, Standing Orders of the Congress, FIFA endorsed the Court of Arbitration for Sport (CAS) as the appropriate body to hear appeals, and finalise matters, from decisions made by the Disputes Resolution Chamber of the FIFA Players' Status Committee. This document was revised on 12 September 2005 and again on 8 June 2006. Article 60 of the June 2006 version states:

“FIFA recognises the independent Court of Arbitration for Sport (CAS) ... to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”⁵

Article 47 of the CAS Code of Sports-Related Arbitration states:

“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 to the appeal, in accordance with the statutes or regulations of the said sports-related body.”⁶

In short, this dispute resolution mechanism contains two routes. The first is via a procedure developed in collective bargaining between representatives of clubs/national associations and players.⁷ The second is arbitration, involving at

⁴ Article 42, 2001 Regulations, above n 2.

⁵ Article 60, FIFA Statutes: Regulations Governing the Application of the Statutes, Standing Orders of the Congress, 8 June 2006. Article 23 of the 2005 Regulations for the Status and Transfer of Players, above n 2, formally incorporated the CAS as the end point for resolving disputes involving players and coaches.

⁶ Court of Arbitration for Sport, Statutes of the Bodies Working for the Settlement of Sports-related Disputes, Article 47.

⁷ Of all the sports that operate globally, soccer provides the strongest recognition for the role of player associations. Consistent with “social dialogue” norms of the European Union, FIFA has entered into what industrial relations scholars describe as a “high trust” relationship with the International Federation of Professional Footballers' Associations (FIFPro), a 45-member confederation of player associations, 25 of which are in Europe. See <http://www.fifpro.org/>, accessed 12 July 2007. For information concerning FIFPro see Braham Dabscheck, “International Unionism's Competitive Edge: FIFPro and the European Treaty” (2003) 58 *Relations Industrielles/Industrial Relations* 85–108; and Braham Dabscheck “‘At the Top Table’: Player

first instance FIFA's Disputes Resolution Chamber, with appeals and final determinations being the province of the CAS.

This paper will examine two recent disputes which involved the CAS and their broader significance concerning developments within soccer of a burgeoning international jurisprudence. The first involved a dispute between two Italian coaches with Tianjin Teda Football Club of the People's Republic of China,⁸ and the second, a French player with the Turkish club Galatasaray SK.⁹

Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC

The Italian national Giuseppe Materazzi signed a contract to coach Tianjin Teda FC from 15 December 2002 to 14 December 2005, at an annual salary of US\$400,000 net of taxes. The contract contained three other clauses which are of interest. First, if the team did not achieve certain specified positions on the league ladder, then each year over the life of the contract Materazzi would incur a reduction in his annual salary of US\$50,000. Second, if the club decided to "resolve the contract at its own discretion because of none of ... (Mr Materazzi[']s) fault" Tianjin Teda FC would pay him his three-year salary entitlement of US\$1,200,000 plus an indemnity of US\$100,000 net of taxes. Third, if the team did not achieve specified levels in 2003 and 2004, Tianjin Teda FC could terminate his services, subject to paying out his salary for that year and an indemnity, net of taxes, of US\$250,000.¹⁰

Tianjin Teda FC subsequently hired Giancarlo Oddi, another Italian national, to assist Materazzi. His salary had the same structure as that of his colleague with lower levels of payment, forfeiture for poor on-field performance and indemnities if dismissed.¹¹ Both contracts contained a disputes resolution clause. It said: "Any dispute shall be settled by the legal committee of the China Football Federation according to the relevant regulations of China Football Federation and FIFA and the laws of the People's Republic of China."¹²

Four weeks prior to the end of the 2003 season, Tianjin Teda FC terminated the employment of the two coaches. Their contracts were not paid out, nor did they receive the indemnity payments specified in their contracts. On 15 September 2004, the dispute was referred to the Disputes Resolution Chamber of the FIFA

Unions in Soccer" in Wladimir Andreff and Stefan Szymanski (eds) *Handbook on the Economics of Sport*, Edward Elgar, Cheltenham 661–667.

⁸ CAS 2005/A/909-910-911-912 *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC* [9 March 2006].

⁹ CAS 2006/A/1180 *Galatasaray SK v Frank Ribery & Olympique Marseille* [24 April 2007].

¹⁰ Paragraph 2.5, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹¹ Paragraph 2.6, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹² Paragraph 2.7, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

Players' Status Committee. On 14 October 2004 Tianjin Teda FC submitted a defence where it "specifically appealed" and "offered all possible cooperation" to FIFA's Disputes Resolution Chamber.¹³

On 15 December 2004 the coaches amended their claim to include payments for legal expenses, taxes and interest.¹⁴ The club responded by challenging the jurisdiction of the Disputes Resolution Chamber, claiming that the matter should be resolved in China, per the disputes resolution clause contained in the coaches' contracts.¹⁵ The Disputes Resolution Chamber rejected the club's jurisdictional claim. It found that the dispute involved an "international aspect" and Tianjin Teda FC had initially accepted its jurisdiction.¹⁶ On the substantive point of the dispute, the Disputes Resolution Chamber ruled that the club had unilaterally terminated the coaches' employment, and they should be paid the remainder of the monies owing on their employment for 2003, the (higher) indemnities specified in their respective contracts plus 5 per cent interest for late payment of monies owed.¹⁷

Both parties appealed this decision to the CAS. The coaches maintained that they should receive payment for the three years of their contracts, plus the lower indemnity payment, legal expenses, taxes and interest rather than the one year of salary awarded by the Disputes Resolution Chamber.¹⁸ The club again challenged the jurisdiction of the proceedings, maintaining that matters should be determined according to Chinese law as contained in the disputes resolution mechanism in the contracts, and maintained that Tianjin Teda FC had not terminated the coaches' contracts.¹⁹

The CAS ruled against Tianjin Teda FC on the jurisdictional matter. It found that the club had initially accepted the resolution of the dispute by the Disputes Resolution Chamber. It said, "The fact that the Club afterwards contested such competence breaches the good faith principle."²⁰ The CAS concluded that the dispute was of an "international nature", involving a Chinese club and two Italian coaches. It added that FIFA's 2005 Regulations for the Status and Transfer of Players are "competent" for the resolution of disputes involving a club or an association and a coach "that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level".²¹ Moreover, despite requests by the CAS, the club was unable to furnish any evidence that the Chinese Football Association's Lawsuit

¹³ Paragraph 2.20, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁴ Paragraph 2.22, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁵ Paragraph 2.23, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁶ Paragraph 2.24, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁷ Paragraph 2.25, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁸ Paragraphs 3.5 to 3.7, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

¹⁹ Paragraphs 3.8-3.9, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²⁰ Paragraphs 6.1 and 6.3, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²¹ Paragraph 6.4, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

Commission was constituted according to Article 42 of FIFA's Regulations for the Status and Transfer of Players with "members chosen in equal numbers by players and clubs, as well as an independent chairman".²² Hence, the CAS ruled that the Disputes Resolution Chamber had jurisdiction to hear the dispute.²³

Per FIFA's various regulations and its own Code of Sports-Related Arbitration, the CAS determined the appeal based on Swiss law.²⁴ It found that the coaches' employment had been terminated four weeks prior to the end of the 2003 season. Most significantly, it ruled that such termination "had a major impact for the Coaches, since the last four matches of the season were upmost for determining for the final ranking of the first team, ranking for which the parties had contractually set different type of consequences".²⁵ The CAS determined that the coaches should have the three years of their respective contracts paid in full, the respective (lower) indemnities specified in their contracts, five per cent interest on monies owed and 3,000 Swiss Francs each in costs.²⁶

Galatasaray SK v Frank Ribery and Olympique Marseille

Frank Ribery, a French national, entered into a contract with the Turkish club Galatasaray SK. The contract covered the period 1 February 2005 to 30 June 2008. Key features of the contract were that Ribery would receive initial payments on signing the contract and at the commencement of each season and a scale of monthly payments for each "season". In addition, up until June 2005 he would receive 5,000€ for each game he played, with a bonus of 75,000€ if he played 10 games. Bonus payments were also specified for the remaining years on his contract.

His contract forbade him from getting "in touch with any other club either directly or indirectly for any transfer" during the life of his contract. The clause went on to state he "shall notify his club, which desires to negotiate transfer ... but he shall never conduct a personal negotiation".²⁷ In the event of Ribery being transferred to another club during the life of his contract, the contract specified that he would have to pay Galatasaray SK a transfer fee of 10,000,000€. Finally, it was stated that the contract "shall be governed by Turkish Law and any dispute concerning the contract shall be settled under" Article 42 of FIFA's regulations governing the status and transfer of players.²⁸

²² Paragraph 6.5, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8. The quotation comes from Article 42, 2001 Regulations, above n 2.

²³ Paragraph 6.6, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²⁴ Paragraphs 7.1–7.3, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²⁵ Paragraph 9.7, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²⁶ Paragraphs 10.3, 10.5 and 12.3, *Giuseppe Materazzi and Giancarlo Oddi v Tianjin Teda FC*, above n 8.

²⁷ Paragraph 2.1, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

²⁸ Paragraph 2.1, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

In the period 1 February to 13 June 2005 Ribery played 17 times for Galatasaray SK.²⁹ The club, however, did not pay him the monthly or performance payments specified in his contract. Ribery's agent wrote to Galatasaray SK four times in May complaining about the lack of such payments. Ribery sent a letter to the club on 13 June 2005, where he informed Galatasaray SK that his "trust" with the club had been "completely broken", he would terminate his contract under the "just cause" provisions of FIFA's 2001 Regulations concerning the Status and Transfer of Players and seek employment elsewhere.³⁰ On the following day Ribery referred the matter to FIFA's Disputes Resolution Chamber.³¹ Galatasaray SK on that day paid him the monies to which he was entitled.³² The day after that, Olympique Marseille, a French club, announced that it had signed Ribery.³³

The Disputes Resolution Chamber determined that Galatasaray SK had breached its contract with Ribery without "just cause" and that, as a result, its claims against the player and Olympique Marseille failed. It also decided that no compensation was due to Ribery for the termination of his contract without just cause.³⁴ Galatasaray SK decided to appeal this decision to the CAS.

The essence of Galatasaray SK's claims were that Ribery had terminated his contract unjustly, that he should pay a penalty of 10,000,000€ for leaving Galatasaray SK before the completion of his period of employment, per his contract, and that Olympique Marseille "be held jointly and severally liable" with Ribery for their role in inducing him to breach his contract and obtain his services free of the payment of any transfer fee.³⁵ For his part, Ribery maintained that the termination of his contract had been for reasons of "just cause", and, amongst other things, he should be awarded damages for the early termination of his contract.³⁶

In handing down its decision the CAS devoted some time in considering jurisdictional issues associated with the case. It noted that Ribery's contract had specified that disputes should be settled according to Article 42 of FIFA's 2001 Regulations for the Status and Transfer of Players³⁷ and that the parties had

²⁹ Paragraph 2.2, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³⁰ Paragraph 2.3, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9. See Articles 21, 22 and 23 of the 2001 Regulations, above n 2.

³¹ Paragraph 2.4, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³² Paragraph 2.5, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³³ Paragraph 2.6, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³⁴ Paragraph 2.7, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³⁵ Paragraphs 4.1.1 and 4.1.2, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³⁶ Paragraphs 4.2.1 and 4.2.2, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

³⁷ Paragraph 7.8, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9. Also see paragraph 2.1, n 28 above; and the 2001 Regulations, above n 2.

agreed to abide by Article 60 of FIFA's 2006 Statutes in submitting the dispute to the CAS for adjudication.³⁸ The CAS observed:

*“Pursuant to Art. 60 para, 2 of the FIFA Statutes the CAS ‘shall primarily apply the various regulations of FIFA and, additionally, Swiss law’. With this choice of law clause the FIFA Statutes take into account an important characteristic of international sport. For, the latter is a global phenomenon which demands globally uniform standards. Only if the same terms and conditions apply to everyone one who participates in organised sport, are the integrity and equal opportunity of sporting competition guaranteed.”*³⁹

On the substantive matters raised in the dispute, the CAS concluded that Ribery had terminated his employment with Galatasaray SK for “just cause”, per FIFA's 2001 Regulations on the Status and Transfer of players for the late or non payment of his contractual terms.⁴⁰ Hence, it dismissed Galatasaray SK's claims for the payment of 10,000,000€.⁴¹ Ribery's claim for compensation was rejected as his contractual terms had “indisputably improved” following his move from Galatasaray SK to Olympique Marseille.⁴²

Summary and Conclusion

In 2001 FIFA established a procedure for resolving disputes between clubs/national associations and players (and other officials such as coaches). Such disputes could be determined at the national or local area if there was in place a procedure determined by collective bargaining between representatives of clubs/national associations and players. In the absence of such a procedure, disputes would be resolved by FIFA's Disputes Resolution Chamber, with appeals to the CAS for final determination.

In the dispute involving the Chinese club Tianjin Teda FC and the two Italian coaches, the CAS determined that the matter could not be resolved under the rules of the Chinese Football Association and the laws of the People's Republic of China due to the absence of a procedure developed by collective bargaining by clubs/national association and players. While the question of jurisdiction did not emerge in the dispute between the Turkish club Galatasaray SK and the French player Frank Ribery, the CAS, in its examination and interpretation of

³⁸ Paragraph 7.8, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9. Also see Article 60 of the FIFA Statutes, above n 5.

³⁹ Paragraph 7.9, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9. Also see CAS 2005/A/983 & 984 *Penarol v Bueno, Rodriguez & PSG*.

⁴⁰ Paragraph 8.4.1, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

⁴¹ Paragraph 8.7, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

⁴² Paragraphs 8.8.4 and 8.8.5, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.

FIFA's 2001 (and 2005) Regulations for the Status and Transfer of Players⁴³ and Regulations Governing the Application of the Statutes, Standing Orders of the Congress,⁴⁴ enunciated the principle that "international sport ... is a global phenomenon which demands globally uniform standards".⁴⁵ These cases are examples of soccer's burgeoning international jurisprudence.

⁴³ 2001 Regulations and 2005 Regulations, above n 2.

⁴⁴ Regulations Governing the Application of the Statutes, above n 5.

⁴⁵ Paragraph 7.9, *Galatasaray SK v Frank Ribery & Olympique Marseille*, above n 9.