

A Solid Foundation of FIFA Proposals under the CAS jurisprudence



By **Frans DE WEGER**¹
Lawyer, BMDW Advocaten
Haarlem – The Netherlands

CAS 2022/A/9215 *Al Batin v. Renato de Araujo Chaves Junior & FIFA*²

In this article, the award CAS 2022/A/9215 will be discussed. In this CAS award, the FIFA general secretariat's ability to submit written proposals to parties involved in a dispute before FIFA was under review and analysed by the Court of Arbitration for Sport (CAS). The author will discuss the CAS award, also in light of the relevant CAS jurisprudence in relation to this topic and to see what legal lessons can be learned for the future.

Introduction

By means of [Circular no. 1689](#), dated 21 August 2019, FIFA introduced a very important procedural tool in its regulations in order to speed up the decision-making process in FIFA proceedings.

More specifically, by means of a new provision in the [Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber](#) (the Procedural Rules), *i.e.* Article 13, the FIFA Players' Status Department (FIFA PSD) was granted the ability to submit written proposals to the parties involved in order to settle disputes before FIFA related to training reward cases regarding the calculation of the amounts owed. FIFA PSD was, however, only given such legal powers for cases that did not contain complex factual or legal issues.

In the meantime, and from the entry into force of these new procedural powers mandated to the FIFA PSD, the CAS had to deal with several cases related to such proposals. In these cases, FIFA's power to

submit such proposals was under review. The case CAS 2022/A/9215 is the most recently published award of CAS (Award) in which CAS had to deal with this issue.

In this article, first, as an introduction, an overview of the relevant provisions under the FIFA Regulations will be set out. Thereafter, the facts and most relevant deliberations will be highlighted in the case under review: CAS 2022/A/9125. As an analysis, the Award will be discussed in light of CAS jurisprudence in similar matters in order to highlight its relevance.

¹ Frans DE WEGER is Chairperson of the Dispute Resolution Chamber of the FIFA Football Tribunal as from 2021. He is author of the book "The Jurisprudence of the FIFA Dispute Resolution Chamber", 2nd edition, published by T.M.C. Asser Press in 2016. Frans DE WEGER is an attorney-at-law/founder of BMDW Advocaten and a CAS Arbitrator since 2015. As from 2021, he is President of the Dutch Sports Law Organisation.

² [CAS 2022/A/9215 Al Batin v. Renato de Araujo Chaves Junior & FIFA](#).

Background: FIFA's Power to Submit Proposals

When going back to the birth of the FIFA Dispute Resolution Chamber (DRC) in 2001, in the first 15 years, proceedings before FIFA took considerable time. It was not uncommon that FIFA proceedings lasted for more than years, to say the least. Experienced counsels (at least, those from a certain age...) will remember, for sure. Whilst CAS proceedings went relatively fast back then, legal practitioners in the football industry were not happy to start proceedings before FIFA's decision-making bodies because of enormous delays.

During the years, FIFA worked hard to solve this issue, and positive developments took place, not only in terms of further professionalization but also with regard to successfully minimizing the length of FIFA proceedings. As an example, procedural rules were tightened, the exchange of correspondence was limited, and the so-called fast-track procedure of Article 12bis of the [FIFA Regulations on the Status and Transfer of Players](#) (RSTP) came into place, to name a few positive developments. Nowadays, further processed under the umbrella of the Football Tribunal as of 2021, a very solid and efficient decision-making process is in place with the issuance of decisions of the decision-making bodies within a reasonable (or to say, short) period of time.

As set out in the introduction, one of the means to speed up FIFA's decision-making process was the introduction by FIFA in 2019 of an interesting procedural tool: the ability to submit proposals to parties that are involved in FIFA proceedings. This mechanism was modeled on Swiss civil procedure and was another step to expedite legal proceedings before FIFA's decision-making bodies. As such, in the 2019 edition of the Procedural Rules, introduced in Circular no. 1689 of 21 August 2019, as set out above, this new ability was inserted through of Article 13 under the title "Proposals from the FIFA administration". This new provision read as follows:

"1. In disputes relating to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has clear, established jurisprudence, the FIFA administration (i.e. the Players' Status Department) may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. At the same time, the parties shall be informed that they have 15 days from receipt of FIFA's proposals to request, in writing, a formal decision from the relevant body, and that failure to do so will result in the proposal being regarded as accepted by and binding on all parties.

2. If a party requests a formal decision, the proceedings will be conducted according to the provisions laid down in these rules."

The exact same provision was also transferred to the subsequent version of the Procedural Rules, i.e. the [June 2020 edition](#). However, by means of [Circular no. 1743](#), dated 14 December 2020, relevant changes were made in this respect, as the use of proposals by the FIFA general secretariat in training reward disputes was now also implemented in the so-called "non-complex contractual disputes". In fact, as from the [October 2021 edition of the Procedural Rules](#), a new provision was inserted under the title "Proposal from the FIFA general secretariat". More specifically, a new Article 20 was created in the Procedural Rules, which reads as follows:

"1. After determining that the claim is complete, in disputes without prima facie complex facts or legal issues, or in cases where this is clear established jurisprudence, the FIFA general secretariat may make a proposal to finalise the matter without a decision issued by a chamber. Such proposal is without prejudice to any further decision issued by a chamber.

2. A party shall accept or reject the proposal within the time limit granted by the FIFA general secretariat.

3. A party that fails to respond to the proposal shall be deemed to have accepted it.

4. Where a proposal is accepted, a confirmation letter will be issued by the FIFA general secretariat. The confirmation letter shall be considered a final and binding decision pursuant to the relevant FIFA regulations.

5. Where a proposal is rejected, the respondent(s) must submit their response within the time limit indicated in the proposal."

Indeed, the most relevant change was related to the fact that FIFA's approach to the possibility of submitting proposals was now extended to non-complex contractual disputes. However, with this new change, it was also added that such assessment always had to be made on a *prima facie* basis and that, when a proposal is accepted, a confirmation letter would be issued by the FIFA general secretariat, which will be considered a final and binding decision pursuant to the relevant FIFA Regulations. This was not yet inserted in the former provision. Also, with this new provision,

it was clarified that if the proposal was rejected, the respondent(s) had to submit its (their) response within the time limit indicated in the proposal.

The relevant parts and changes under the above legal framework will be discussed in the next paragraphs after having set out the most relevant facts and considerations of the case at hand.

The Case Under Review: CAS 2022/A/9215

Facts

The case centers around a dispute between the Brazilian player *Renato DE ARAÚJO CHAVES Junior* (Player) and the Saudi Arabian professional football club *Al Batin* (Club) in relation to outstanding payments based on an employment contract as was concluded between the parties.

In this case, the Player lodged a claim against the Club before the FIFA DRC for outstanding remuneration in the amount of USD 483,332 (approx. EUR 451,000). On 5 September 2022, the FIFA general secretariat sent the Club and the Player, to the e-mail addresses albatin1399@gmail.com, info@albatin.sa and taynanchaves@uol.com.br, the claim lodged by the Player along with a proposal in order to settle the matter between the parties.

The proposal was made in accordance with Article 20 Procedural Rules, and the proposal to settle the dispute was as follows: *Al Batin* had to pay the Player an amount of USD 483,332 as outstanding remuneration plus interest of 5% *per annum* from certain dates. It was explicitly mentioned in the proposal by the FIFA general secretariat that, in line with Article 20 of the Procedural Rules, the parties had to either accept or reject the proposal by 20 September 2022 and that, if a party failed to respond to the proposal before this date, it was deemed to be accepted.

The Club did not reply to the proposal, nor file a response to the Player's claim within the granted deadline (*i.e.* by 20 September 2022). Therefore, in line with Article 20, FIFA sent the confirmation letter to the Club and the Player to the same above-mentioned e-mail addresses. It was confirmed in the letter that the proposal was now accepted and that it now constituted a final and binding decision on all the parties pursuant to the FIFA Regulations. In the same letter, it was mentioned that payment had to be made by the Club to the Player within 45 days from the notification of the confirmation letter, in the absence of which the Club would be banned from registering any new players, either nationally or internationally, up until the amount was paid.

As the Club disagreed with FIFA's decision, it filed an appeal in front of the CAS against the Player and FIFA. In its submissions, the Club argued that the Player had not granted the Club sufficient time to comply with its obligations. In fact, instead of a 15-day deadline as

required under Article 14bis RSTP, the Club was only granted a 10-day deadline. As to the outstanding amount itself, the amount owed was less than the amount claimed by the latter.

The Player, on the other hand, argued that his calculation should be considered and that the Club's calculation was incorrect. He also argued that Article 14bis RSTP did not apply as the contract was already terminated, and did not concern a contract termination for just cause.

FIFA, also sued as a defendant by the Club, took the position that the Club failed to reject the proposal and, as a consequence, the proposal became final and binding according to Article 20 of the Procedural Rules. According to CAS jurisprudence, so argued FIFA, the Club's acceptance of the proposal led to its preclusion challenging the proposal and the amounts contained therein.

Legal considerations

Although the Club did not dispute the applicability of Article 20 Procedural Rules, the Sole Arbitrator emphasized that such provision provided a regulatory basis for the FIFA general secretariat to issue a proposal in disputes "*without prima facie complex facts or legal issues*". The Sole Arbitrator agreed with FIFA's assessment that the Player's claim for payment of outstanding salaries submitted on 1 September 2022 did not seem *prima facie* to raise any complex factual or legal issue, thus permitting the FIFA general secretariat to issue the proposal. In any event, the Sole Arbitrator also observed that FIFA did not arbitrarily or unreasonably exert its ample discretion in qualifying this matter as "*simple*" and concluded that the Player's claim did not raise complex factual or legal issues. FIFA was thus entitled to notify the proposal.

As a next step, the Sole Arbitrator addressed the issue of the failure to respond from the side of the Club and found that this failure could be qualified as an acceptance since it was properly notified and the Club had, therefore, the possibility to reject it. The Sole Arbitrator observed that the e-mail addresses used to notify the proposal were also the same as those used by the Player to send the warning note and also by FIFA to notify the appealed decision on 22 September 2022.

As to the consequences of the Club's failure to object to the proposal in a timely manner, the Sole Arbitrator found that the regulatory framework implemented by FIFA precluded the Club from disputing the content of the proposal after 20 September 2022 and, accordingly, the Sole Arbitrator to examine the merits of the present dispute. The Club's implicit acceptance of the proposal was similar to concluding a settlement agreement. Once it is concluded, so found by the Sole Arbitrator, a party to a settlement cannot withdraw its consent from the settlement agreement at will but it is, in principle, legally bound by it. Allowing the Club to challenge the content of the proposal would also constitute a violation of the principle of *venire*

contra factum proprium, which - as stated by CAS jurisprudence - provides that "when the conduct of one party has led to raise legitimate expectations on the second party, the first party is barred from changing its course of action to the detriment of the second party." In fact, so concluded the Sole Arbitrator, by failing to object against the proposal within the time limit granted by the FIFA general secretariat without a proper justification, the Club induced legitimate expectations on the Player and FIFA that it accepted the proposal. The Sole Arbitrator finally concluded that the appealed decision had to be upheld and ruled that he was excluded from addressing the merits of the case.

Relevance of the CAS Award under the CAS jurisprudence

At first glance, the Award itself does not seem to be that high profile. However, when one places it in the context of previous CAS jurisprudence in similar matters where FIFA's entitlement to issue proposals was also at stake, it becomes more interesting. As set out in the introduction, the Award is the most recently published award of the CAS of a series of cases before CAS panels in the past, where these panels also had to review FIFA's ability to submit proposals to settle disputes. The relevance of the Award, so finds the author, mainly lies in the fact that it now definitely confirms the approach of previous CAS awards, in particular its legal reasoning as to certain legal questions, also noting that the new Article 20 (instead of its predecessor Article 13) was at the center of the dispute. When one compares the Award to these other awards, in particular its legal reasoning as to these questions, it is noticed that the Award is relatively short on this front and also strongly relies on previous CAS awards. Therefore, to better understand the various conclusions made in the Award and, because of the references made, it is helpful to also look at the legal reasoning of the previous awards and to highlight its relevance.

The first published case where the CAS Panel had to review FIFA's entitlement to issue proposals was CAS 2020/A/7252.³ As said, it must be noted that the former provision, *i.e.* Article 13 of the Procedural Rules, was at the center of this dispute. Although this issue was not at stake in the Award, the first issue the Panel had to deal with was whether FIFA's decision that the content of the proposal had entered into force was

an appealable decision. The respondents in that case argued that FIFA's decision could not be considered an appealable decision and that it was merely a letter of an informative nature. They argued that, if the club (that appealed in that case), wanted to challenge being required to pay the outstanding amount, it should have objected to or appealed the proposal. The CAS Panel did, however, not agree with such position and found the appeal admissible. Although the proposal itself was not considered a final and binding decision, it concluded that the content of the "confirmation letter", such as the appealed decision, was a decision that definitely affected the legal position of the parties involved. It was thus a decision that was appealable. It is interesting to note that one of the changes made in the new Article 20 of the Procedural Rules was that the confirmation letter shall be considered a final and binding decision pursuant to the relevant FIFA Regulations.

Notwithstanding the above legal issue of admissibility, in CAS 2020/A/7252, the CAS Panel, as the Sole Arbitrator also did in the Award, first discussed FIFA's entitlement to issue proposals. Also, in other cases, the panels dealt with this issue first (CAS 2020/A/7516,⁴ CAS 2020/A/7517⁵ and CAS 2021/A/7636⁶). In CAS 2020/A/7252, the Panel found that Article 13 - once again, the previous provision - provided a regulatory basis for the FIFA administration to issue proposals. Although the Panel found the reference to "without complex factual or legal issues" somewhat unfortunate, the Panel derived from this provision that the assessment of whether or not there are complex

3 [CAS 2020/A/7252 BFC Daugavpils v. FC Kairat & FIFA.](#)

4 [CAS 2020/A/7516 Antalyaspor A.S. v. Abuja City FC & FIFA.](#)

5 [CAS 2020/A/7517 Antalyaspor A.S. v. Green Horse Football Academy & FIFA.](#)

6 [CAS 2021/A/7636 Sønderjyske Fodbold AS v. FIFA & Dabo Babes FC.](#)

factual or legal issues is to be made on a *prima facie* basis and on the basis of the claim alone. In any event, the Panel found that the FIFA administration had to be afforded ample discretion in determining whether it considers a case to be complex and, thus, whether or not to issue a proposal to the interested clubs, given that such discretionary power is wholly counterbalanced by the fact that each of those clubs has the right, at its sole discretion, to reject the FIFA proposal and ask for a reasoned decision. In other words, parties are entirely free to reject the proposal and to have its case forwarded to a chamber dealing with its case. However, once the proposal is accepted, it is final and binding. With the Award, it is clear to the author that FIFA's entitlement to issue proposals is, once again, legally accepted. In any event, it is clear with the Award that the acceptance of FIFA's power to issue proposals stands and is firmly based on CAS jurisprudence (CAS 2020/A/7516, CAS 2020/A/7517 and CAS 2021/A/7636).

An interesting note to make is that the "*prima facie*" assessment was also added to the new provision, *i.e.* Article 20 of the Procedural Rules, after CAS 2020/A/7252. At the same time, the author also thinks that the "*prima facie*" assessment is the most important legal flashpoint for this analysis. In fact, it was at this particular point that another CAS Panel, more specifically in CAS 2021/A/7636, took a different route as it found that the FIFA administration went beyond its margin of ample discretion in determining the complexity of the case as it did not conduct sufficient due diligence or sufficient investigation prior to determining to issue the proposal. The Panel did, however, not decide that FIFA's entitlement to issue proposals was not accepted in general - note: this was also accepted in CAS 2021/A/7636 - but that, in this specific case, it could not be established that that specific case was absent of complex factual circumstances.

Looking at the specific facts of CAS 2021/A/7636, and having in mind that it concerned an issue of training compensation whereby it was questioned by the parties whether or not training compensation had to be included based on the wording of the transfer agreement, it is not unfair that the Panel in that specific case decided that it did not seem to be a "*simple*" case. In other words, it was decided that the case did not seem to point to a simple case suitable for fast-track proceedings. However, at the same time, it must be noted again that the Panel did not attack FIFA's entitlement to issue proposals as such. It is, however, a signal, now being aware of the outcome in CAS 2021/A/7636, that when making the assessment, one will have to be mindful that the case must be "*simple*" enough to issue a proposal.

"The *prima facie* assessment [...] is an important - if not the most important - hurdle in the process of the issuance of proposals"

Anyway, in the Award, the Sole Arbitrator came to the conclusion that - noting at the same time that the correctness of the procedure followed by the FIFA general secretariat was not disputed - the case did not seem *prima facie* to raise any complex factual or legal issues. In any event, it was decided that FIFA did not arbitrarily or unreasonably exert its ample margin of discretion in qualifying the case as "*simple*". The Sole Arbitrator attached much value to the fact that the Club could have rejected the proposal. However, it must be taken into account, which can be learned from CAS 2021/A/7636, that the *prima facie* assessment, after having analyzed the jurisprudence of the CAS as to the issuance of proposals, is an important - if not the most important - hurdle in the process of the issuance of proposals. CAS will have a critical eye on this part of the process when accepting the issuance of proposals.

Another important legal issue discussed in the Award, after the assessment that FIFA was entitled to issue proposals, was whether the notification was made correctly. It makes full sense to say that

there must be full certainty that notification was made correctly, all the more so in light of the severe consequences of explicit or - even more important - implicit acceptance of proposals in terms of not accepting the proposal in time. In fact, it was also for this reason that this second issue was put on the table by the Sole Arbitrator and dealt with by him in the Award.

A prior question to the main question, whether the notification was made correctly, is whether a party's failure to respond to a proposal can be qualified as an acceptance. The Sole Arbitrator did not specifically address this question but, in CAS 2020/A/7252, the Panel made this analysis and was clear that a failure to respond equates to acceptance. By making reference to Circular no. 1689, such policy was accepted as it clearly followed from such circular that should none of the parties reject the proposal within 15 days following its notification *via* TMS, the proposal will become binding on them. Although in CAS 2020/A/7252, the previous provision Article 13 was at stake, as mentioned before, this is now also clearly reflected in the new Article 20 as it follows from such provision that a party that fails to respond to the proposal shall be deemed to have accepted it.

Getting back to the main legal question, more specifically whether the notification was made correctly, the Sole Arbitrator noted that the Club did not dispute that it actually received the proposal, which in itself was already sufficient reason that the proposal was correctly notified. Irrespective thereof,

the Sole Arbitrator observed that the notification was made correctly. In fact, the Sole Arbitrator noted that the e-mail addresses used to notify the proposal were the same as those used by the Player to send the warning note and also by FIFA to notify the appealed decision on 22 September 2022. It was for this reason that it was concluded that the notification by FIFA was made correctly. It is also fair to say that, under such circumstances, the notification must be accepted as the proposal has been correctly entered into the recipient's sphere of control.

The final legal issue that had to be addressed were the legal consequences of a party's failure to timely object against the proposal, as the Club did. In all the CAS awards in which the panels had to address this

issue, they were unanimous in their view, including the Award, that the appellants were precluded from disputing the content of the proposals. The same legal reasoning in the awards can be observed, pointing out that allowing parties to dispute proposals to which they agreed would amount to a violation of *venire contract factum proprium* (the doctrine recognized in Swiss Law, providing that where the conduct of one party has induced legitimate expectations on another party, the first party is estopped from changing its course of action to the detriment of the second party). In other words, by failing to object to the proposal within the time limit granted, such parties induce legitimate expectations that it accepted such proposal. The Sole Arbitrator's reasoning in the Award is therefore fully in line with previous case-law.

Final Conclusions: Lessons to be Learned

As a general conclusion, it can be noted that all CAS panels were on the same page as to FIFA's entitlement to issue proposals to parties to settle disputes. As such, FIFA's procedural rules provide a regulatory basis for the FIFA administration to issue proposals in disputes related to training rewards as well as contractual disputes insofar as these disputes are "*without prima facie complex facts or legal issues*". There is no doubt that CAS jurisprudence in relation to FIFA's power to issue proposals, which is now confirmed in the Award, clearly points in such a direction.

Analyzing the previous CAS awards on which the Award is based, it can further be concluded that panels applied the same structure and posed itself the same legal questions in order to assess the issues at stake. Only the Panel in CAS 2021/A/7636 came to a different conclusion as to the question of whether FIFA was entitled to issue a proposal on the understanding that the review was based on the former Article 13. However, also in that case, the CAS Panel decided that the FIFA administration has, in principle, the authority to issue proposals. That was not put in question.

Based on the Award at stake and in light of the CAS jurisprudence in similar matters, as discussed, a few final conclusions can be drawn that were also set out in CAS 2021/A/7636.

First, FIFA has in principle the authority to issue proposals, as stated above, if either of the prerequisites are met. Second, FIFA has ample discretion in making that assessment, although it can be learned from CAS 2021/A/7636 that FIFA should not act arbitrarily and should carry out proper due diligence. Put differently, the ample discretion is accepted. It is stating the obvious that proper due diligence is of the essence, but as long as FIFA does not act arbitrarily,

the assessment will survive. Third, failure to respond to a proposal qualifies as acceptance, bearing in mind that parties are always entitled to reject the proposal. Further to this, it was also decided in CAS 2021/A/7636, as the notification was made in that case *via* TMS, that notification of a proposal *via* TMS was valid and permitted and that the parties have the duty to regularly check the "*Claims*" tab in TMS. In this regard, it must be noted that, in the Award, FIFA sent the proposal to the correct e-mail addresses, which were all active before and after the notification, making it clear that the Club was thus properly notified and that such notification fully stands.

Please keep in mind that all the previous CAS cases prior to - and so, except for - the Award at stake were dealing with the predecessor of the new Article 20 of the Procedural Rules and that, in the meantime thus, a new provision came in place that now covers any *lacunas* that existed under the previous legal framework. Indeed, this new provision was now tested in the Award.

As it was already clear that the fast-track system of proposals has proven to be extremely effective and is one of the steps taken by FIFA to make its dispute system even more efficient, it is now also legally safe to say, without reluctance, that the mechanism with regard to proposals will be accepted by the CAS in future cases. This brings us to the final conclusion: proposals can be issued by FIFA to settle disputes as long as the case is without *prima facie* complex facts or legal issues. This is now all clearly confirmed in the Award, which makes it a relevant one!