



CAF APPEAL BOARD
DECISION 001 – CAI – 30.05.2022

General Secretary
São Tomé and Príncipe Football Association

Cairo, 31st of May 2022

Re: Appeal against the decision of CAF Disciplinary Board – Match n°3 Mauritius Vs. Sao Tomé & Principe, which was played on 24 March 2022, in the frame of the AFCON Qualifiers (Ivory Coast) 2023.

Dear Sir,

Arising out of the Appeal Board's meeting held by videoconference, on the 30th of May 2022, the Board was comprised of:

Mr. Abdulhakim Uthman Mustapha (Nigeria)	Chairman
Mr. Thaddeus Sory (Ghana)	Vice Chairman
Mr. Andy Quamie (Liberia)	Member

I- FACTS

The officials of match no. 3 Mauritius Vs Sao Tome played on March 24, 2022 in the frame of the AFCON Qualifiers reported that The player no.10 Luis Leal Dos Anjos from Sao-Tomé born on May 29, 1987, with the passport number CC187662 did not undergo the obligatory PCR test which is done 48 hours prior to the match in Mauritius as required by the CAF Covid-19 protocol.

The player in question took part in the aforementioned match and after the match he presented a PCR result that was done in Portugal, prior to his trip. The Captain of the Mauritius team, Mr. Lindsay ROSE, took notice of the matter after the final whistle and as soon as he found out he lodged a protest against the player and submitted it to the commissioner in the presence of the Captain of Sao Tome & Principe team who duly co-signed the protest in front of all CAF officials.

The case was submitted to the CAF Disciplinary Jury which met on May 8, 2022 and rendered a decision on the said matter.

The Disciplinary Board decided the following:

- 1. To forfeit the Sao Tomé team for match n°3 Sao Tomé & Principe vs Il Maurice played on March 24, 2022 as part of the*



CAN2023 qualifiers. Under article 105 of the disciplinary code, the match is lost by 0-3 and a higher goal difference obtained on the field is maintained;

2. To impose a fine of USD 10,000 on the Sao Tome & Principe Football Federation;

3. The CAF Disciplinary Jury orders the reimbursement of Reserve Fees to the Mauritian Football Federation as stipulated in Article 43.6 of the CAF Africa Cup of Nations Regulations.

On the 15th of May 2022, the São Tomé and Príncipe Football Association were notified of the said decision.

Upon notification, the STPFA declared their Appeal against the above-mentioned Disciplinary Board decision and then proceeded to send their memorandum of appeal within the stipulated time limit as per article 58 of the Disciplinary Code;

The appeal fees were paid and, in that regard, a payment proof was sent along with the appeal documents;

On the 30th of May 2022, both, the Appellant and the Respondent had a chance to present their arguments to the Appeal Board and in turn they have answered the Board's questions.

II- In Law:

a. CAF Appeal Board's competence to the Case

Pursuant to articles 40, 42 and 13 (Regulations governing the application) of the CAF Statutes, as well as article 13 of CAF Disciplinary Code which define the roles and competences of the Appeal Board, the Appeal Board is competent to deal with the case at hand.

As such, the case was submitted to the Appeal Board whose members have examined all documents relating to the matter.

The Appeal Board confirmed that the case at hand falls within their scope of jurisdiction.

b. Applicable Law

The following relevant provisions apply to the present case.

Pursuant to Article 54 "1. *Anyone who is affected by a decision and has direct interest and was party to the decision justifying amendment or cancellation of the decision may submit it to the Appeal Board. 2. National associations may appeal against decisions sanctioning their players, officials or members. They shall have the written agreement of the person concerned.*"

According to Article 55 of the Disciplinary Code "1. *The party intending to appeal shall announce his intention in writing within three (3) days of notification of the decision. 2. Reasons for the appeal shall then be given in writing within a further time limit of seven (7) days, commencing upon the expiry of the first time limit of three (3) days. 3. The announcement of the intention to appeal shall be sent directly to CAF Secretariat. The petition of appeal shall, however, be forwarded to CAF via the national association. The appellant must make sure that the petition of appeal has been forwarded within the time limit.*"

Pursuant to Article 58 CAF Disciplinary Code "1. *Anyone wishing to lodge an appeal shall deposit the amount of three thousand USD (3,000\$) to CAF's bank account before expiry of the time limit of seven (7) days to formalise the appeal (cf. art. 55 para. 2). 2. The appeal is invalid without this relevant deposit within the relevant time limit frames. 3. The deposit will be reimbursed to the appellant if he wins the case.*"

In the present case, The Appellant lodged its grounds for appeal by the deadline specified in Article 55 and in the written form required by the same provision. The appeal fee (as per Article 58) was paid on time.

It follows that the Appeals Board has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and re-examine the case in full, both factually and legally as per Article 59 which reads as follows: "*the Appeal Board has the full power to review the facts and the law*".



III- In Substance

- It is within the Appeals Board's constant practice to consider whether the disciplinary Board's power of discretion has been abused or exceeded, if the latter bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling.
- The Appeal Board noted that the Disciplinary Board has exercised its discretionary power when determining the sanction applied for not undergoing the Obligatory PCR test 48 hours prior to the match. However, the Board highlighted the fact that the discretionary power of the Disciplinary Board ought to be exercised in accordance with the doctrine of *nulla poene sine lege*, according to which a party can only be sanctioned for an offence that has been proscribed by law, *in casu*, the CAF Disciplinary Code.
- Given that neither the CAF Disciplinary Code nor CAF's COVID-19 Protocol do not provide any sanctions for missing an obligatory PCR test, it is legally baseless to consider the player in question to be ineligible.
- As such the Appeal Board has determined that the Disciplinary Board exceeded the limits of its discretionary power.

DECISION:

After hearing both parties' presentations, the Appeal Board holds as follows :

1. **The Appeal of São Tomé and Príncipe Football Association is considered admissible in form.**
2. **The Appeal of the São Tomé and Príncipe Football Association is upheld and the decision of the CAF Disciplinary Board no. 1 of 12.05.2022 is hereby set aside in its entirety.**
3. **The result of match no.3 is hereby ratified and validated.**
4. **The São Tomé and Príncipe Football Association shall be reimbursed the Appeal fees.**





LEGAL REMEDY:

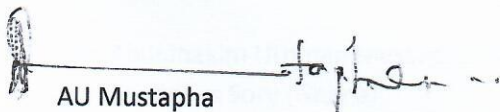
According to article 48 par. 3 of the CAF Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 10 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS.

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport - Avenue de Beaumont 2- 1012 Lausanne - Switzerland
Tel: +41 21 613 50 00 - Fax: +41 21 613 50 01 - e-mail: info@tas-cas.org - www.tas-cas.org

Best Regards,

**CONFEDERATION AFRICAINE
DE FOOTBALL**



AU Mustapha

Chairman of CAF Appeal Board