

November 2004

# Football in Focus

## Mexes 'The Lessons to be Learned'

The FIFA Dispute Resolution Chamber has handed down an important decision in a case brought by the French defender Philippe Mexes against his former club AJ Auxerre.

The case concerned whether Mexes remained under contract with Auxerre or whether he was able to leave the club and join AS Roma. Mexes argued that he was entitled to leave Auxerre at the end of the 2003/04 season whereas Auxerre contended that he remained under contract until June 2006.

The DRC concluded that Mexes had unilaterally breached his contract with Auxerre during the so-called 'Protected Period'.

According to the FIFA Regulations for the Status and Transfer of Players (July 2001), a breach during the Protected Period would ordinarily result in a sanction of four months on the player's eligibility to play for his new club with a possible increase to six months in the case of "aggravating circumstances".

The DRC however gave permission for Mexes to be registered with Roma with immediate effect, and imposed a sanction of only six weeks on his eligibility to

play for Roma. Some clubs have expressed concern that the decision undermines contractual stability as it may encourage players to 'walk out' on their contracts if the sanction will only be six weeks. Such concern may however be misplaced as it is only in "exceptional circumstances" that the DRC can reduce the four month sanction. It is no doubt possible that such "exceptional circumstances" existed in the Mexes case (it being noted that the player and his club had been involved in a war of words for some period).

The message for clubs is therefore clear: the imposition of long sanctions on players for unilateral breach during the Protected Period is not guaranteed. The DRC currently has discretion to reduce sanctions where it sees fit. Clubs should therefore be extremely careful in the management of their contractual relationships with players and behave responsibly if they are to be given the full benefit of the deterrent effect of long term sanctions.

The DRC decision has been appealed to the Court of Arbitration for Sport. The effect of this is to put on hold the DRC's pending cases to determine the level of compensation due to



Auxerre and to investigate the conduct of Roma and the player's agent.

Clubs should also note that FIFA is currently revising the FIFA Regulations for commencement at the start of the 2004/05 season and it is anticipated that issues relating to contractual stability, such as the Protected Period, will once again be under review.

## Football in Focus welcomes you.....

to the first issue of our new football newsletter brought to you by the sports law team at James Chapman & Co.

Our aim is to bring to your attention on a regular basis new and developing areas affecting the world of professional football.

In this issue we are concentrating on two areas, the lessons to be learnt from the Mexes case and a disciplinary update on the new 'fast track' system. These two issues represent significant new developments and we give some tips on how best to avoid the pitfalls.

In future issues we intend to look at such matters as immigration and work permits, doping, changes to the FIFA Regulations and player conduct issues.

We are available to help you on such issues specific to your Club. You can find our contact details overleaf.

## Disciplinary News - Fast Track

The Football Association introduced a new pilot scheme this season for dealing with fast track disciplinary matters. It was felt there was a tendency for the progress of cases to be hampered by the system previously in place.

The new scheme aims to expedite the process for on-field player offences which specifically relate to suspensions. The major development is the instant suspension of players rather than 14 days after the offence as previously. This is in order that The FA can comply with a FIFA Directive that suspensions for red card offences commence with immediate effect.

This will certainly assist all Clubs in providing much more clarity. However it remains to be seen how feasible it is in practice for Clubs to react to such incidents.

### Mistaken identity and wrongful dismissal

It is important that a mechanism has been retained whereby claims of mistaken identity and/or wrongful dismissal can be pursued by a Club, but caution is needed in respect of timetables.

Although in straightforward cases, the player does not have the opportunity to have a personal hearing and the matter is dealt with by way of written-submissions, this perhaps places a greater burden on the Club. The preparation of the submissions is even more vital.

Clubs need to be in a position to react immediately to such situations and begin preparing a case immediately after the match to ensure that it is thoroughly investigated and that they are in a position to lodge legitimate claims fully formulated and supported in such a short period of time.

In general, a claim must be submitted by 12 noon on the next working day after the match with the full written submissions and supporting evidence finalised and submitted a day later.

### Offences unseen by Match Officials

The system has been streamlined to more closely resemble what would happen if the Match Official had seen an incident. Therefore personal hearings in this situation are not allowed and a player is offered the chance to accept The FA's view that a red card would have been shown and, if accepted, the appropriate suspension is imposed with immediate effect.

If a player chooses to deny the charge and not to accept the suspension, a hearing is convened for which the player must file written submissions. Any suspension imposed at the hearing will take immediate effect.

### Appeals

For offences not seen by the Match Officials, appeals against suspension may only be lodged in the event that a suspension exceeds three matches, and then only in respect of the

additional suspension. A separate timetable exists to deal with this procedure but time remains of the essence and an intention to appeal must be notified by 12 noon on the first working day after the hearing or after receipt of written reasons (if requested). A formal hearing takes place and the player has the right to appear and be represented.

### Warning

A word of caution, however, since The FA has the power to increase any punishment if a claim is made frivolously and without merit. A Club may be charged for any failure to submit a claim for mistaken identity if it can be shown that such failure was in order to seek an unfair advantage (ie: by protecting another player from suspension). Finally, any frivolous denials of charges or any other attempts to obstruct the process may be considered to be misconduct in addition and can attract an extra suspension. It remains to be seen how The FA intends to police such matters but what is clear is that they should not be considered empty threats.

This has been a short summary of the way minor on field offences are to be dealt with under the new fast track system. We would be happy to discuss with you any matters which may arise from this area, particularly assisting with new procedures for Clubs to use in reacting to such situations.

## Sports Law Specialists

We have a dedicated team of sports law specialists here at James Chapman & Co.

Both Edward Canty and Matthew Bennett have considerable expertise in the world of football. They have advised the FA Premier League, many FA Premier League and Football League Clubs as well as individual footballers in all aspects of sports law.

You can get in touch with either Edward or Matthew on:

**0161 828 8000**

or

**[football@james-chapman.co.uk](mailto:football@james-chapman.co.uk)**



Edward Canty



Matthew Bennett

**James  
Chapman**  
& Co

THE SPORTS LAW SPECIALISTS

76 King Street  
Manchester  
M2 4NH

[www.james-chapman.co.uk](http://www.james-chapman.co.uk)