CASE LAW

A Introduction to the Case Law Section

1. In a **landmark decision,** 4A_558/2011 of 27 March 2012, the Swiss Federal Supreme Court **for the first time annulled an arbitral award for breach of substantive public policy** (Art. 190(2)(e) PIL Act).[1]

The Court set aside a TAS/CAS award which had confirmed a FIFA decision. The decision, if upheld, would have resulted in a worldwide ban on a Brazilian football player, Francelino da Silva Matuzalem, for his failure to pay a staggering EUR 11 million fine that had been imposed on him by FIFA for breach of his employment contract. The fine was a multiple of his annual revenues. FIFA relied on art. 64 of its (2009) Disciplinary Code that provides for certain sanctions, including a ban, in case of failure to comply with FIFA decisions. The Supreme Court considered that imposing a worldwide ban amounted to a breach of public policy, and that the player could not be held to such excessive commitment (Article 27(2) of the Swiss Civil Code). It also, quite pragmatically, pointed out that a ban was hardly an efficient instrument to promote enforcement of monetary awards against football players whose sole source of revenue was playing football.

2. Collective labour agreements are a typical feature of Swiss employment law. They are negotiated between unions or representatives of employers and employees in a given industry sector and apply to all individual employment contracts. Typically, they contain provisions on minimum salaries, or vacation. Some of them establish a body which handles disputes among affiliated employers and employees. In case 4A_634/2011,[2] the Swiss Federal Supreme Court dealt with a request to set aside a decision of a lower court on a request to set aside an arbitral award rendered by such a body. The body had fined an employer for having underpaid his employees. The employer considered that (i) the arbitral award was arbitrary, and that (ii) the arbitral tribunal had violated his right to be heard by **refusing to hear an allegedly crucial witness**. The Supreme Court found no arbitrariness and restated that arbitral tribunal do not have to accept each and every offer of evidence. **Only offers of evidence that are made in a timely manner and**

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1 Swiss Federal Supreme Court, Decision 4A_558/2011 of 27 March 2012, ASA Bull. 3/2012, p. 591. An English translation will be published in Swiss Int'l Arb. L. Rep. See also the commentary by Laurence Burger, *For the first time, the Supreme Court sets aside an arbitral award on grounds of substantive public policy*, ASA Bull. 3/2012, p. 603.

2 Swiss Federal Supreme Court, Decision 4A_634/2011 of 20 January 2012, ASA Bull. 3/2012, p. 611.