

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 January 2009,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Theo Van Seggelen (Netherlands), member

Philippe Diallo (France), member

Mohamed Mecherara (Algeria), member

Carlos Soto (Chile), member

on a matter between the club

G,

as Claimant

and the club

L,

as Respondent

regarding a dispute for solidarity contribution in connection with
the transfer of the player K.

I. Facts of the case

1. According to the information submitted by the D Football Association, the player, K (hereinafter: *the player*), born on 17 August 1980, was registered for the club G (hereinafter: *the Claimant*), from 1 July 1995 to 2 August 2000.
2. In addition, the **D Football Association** informed FIFA that the football season starts on 1 August and ends on 30 June.
3. On 3 January 2006, the player was transferred from the club, V (hereinafter: *V*), to L (hereinafter: *the Respondent*), for which he was registered on 5 January 2006. The transfer agreement did not provide any transfer compensation neither in favour of V nor in favour of the Respondent.
4. Instead, the said agreement provided the exchange of the player K, who was currently registered with V, for the player J, who was currently registered with the Respondent.
5. On 28 March 2006, the Claimant lodged a claim against the Respondent for the payment of the solidarity contribution for the transfer of the player K from V to the Respondent.
6. In particular, the Claimant claims from the Respondent 45% of the 5% of the assessed value of the transfer compensation, corresponding to seasons 1995/1996-1999/2000, as well as an interest of 5% *per annum* from the due date until the date of receipt of the payment.
7. In this regard, since the agreement pertaining to the exchange of the player in question and J had no value assigned, the Claimant assessed the value of the transfer compensation to be EUR 6,465,500, being this amount the result of the transfer compensation paid for the transfer of the player from the club, A (hereinafter: *A*), to V, less the amount equivalent to the 5 months during which the player actually played for V.
8. In its reply to the claim, the Respondent quoted art. 21 of the Regulations for the Status and Transfer of Players, pointing out that the solidarity contribution is a proportion of the compensation paid to the player's former club. In this respect, the Respondent asserted that in the exchange of the two players no compensation had been paid to V, and therefore no solidarity contribution was due.
9. Subsidiary, the Respondent pointed out that the value of the transfer compensation should be EUR 1,968,750, resulting from the transfer compensation paid by the Respondent to the club M (hereinafter: *M*) for J, i.e. EUR 3,150,000, less the amount equivalent to the 18 months during which J actually played for the Respondent.
10. In response to the Respondent's position, the Claimant stated that the player, K, was subsequently transferred from the Respondent to the club E (hereinafter: *E*).

Therefore, the transfer compensation agreed between the Respondent and E was also to be taken into consideration in order to establish the value of the player's transfer from V to the Respondent. The said transfer was for the amount of EUR 2,500,000 plus and additional amount of EUR 750,000 subject to certain conditions.

11. The respondent in its rejoinder referred once again to art. 21 and art. 1 of Annex 5 of the Regulations, and stated that a calculation made by the Dispute Resolution Chamber on the basis of the "market value" would be an act *extra vires*, beyond the Chamber's power, thus it cannot be a criterion to be applied. Nevertheless, in the case that the Chamber would proceed to calculate a transfer compensation the Respondent stated that the only compensation to be taken into account is the one which the Respondent paid for J.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 28 March 2006. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2005; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 18 par. 2 and 3 of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. (d) of the Regulations on the Status and Transfer of Players (edition 2008) the Dispute Resolution Chamber is competent to decide on the present litigation with an international dimension concerning the distribution of the solidarity contribution claimed by the Claimant in connection with the transfer of the professional player, K, during the course of a contract.
3. Furthermore, and taking into consideration that the player was registered with his new club on 5 January 2006, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008), and considering that the present claim was lodged on 28 March 2006, the previous version of the regulations (edition 2005; hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter.
5. First and foremost, the Chamber acknowledged that the transfer agreement subject of the present dispute provided the exchange of the player K, who was currently registered with V, for the player J, who was currently registered with the Respondent, without providing any transfer compensation neither in favour of V nor in favour of the Respondent. In fact, article 4 of the said agreement stipulates the following, without referring to any compensation: "*The parties hereby enter*

in a transfer agreement to transfer the registrations of J and K (jointly, “the Players”) to V and L respectively”.

6. As a result of the above, the Chamber took note of the position of the Respondent, according to which, since in the exchange of the two players no compensation had been paid by the Respondent to V, no solidarity contribution was due. Moreover, the Respondent referred to art. 21 and art. 1 of Annex 5 of the Regulations, pointing out that the solidarity contribution is a proportion of the compensation paid to the player’s former club. Consequently, in view of the fact that, based on the transfer agreement at hand, no compensation had been paid by the new club, i.e. the Respondent, to the former club, i.e. V, no solidarity contribution is payable.
7. With regard to the position of the Respondent, the Chamber outlined that, as a general principle, any transfer contract represents a bilateral agreement, which implies a mutual exchange of obligations between the parties involved. In the matter at hand, and by means of the signature of the transfer agreement, the parties agreed a mutual exchange of obligations, without providing the payment of any compensation, yet providing the exchange of two players. As a consequence of the aforementioned, the Chamber concluded that the present exchange of players implied indirectly a financial agreement, in view of the fact that the sporting qualities of the players have an economic value in the football employment market.
8. Moreover, the Chamber referred in particular to art. 1 of Annex 5 of the Regulations, and more specifically to the interpretation to be given to the said article and to the solidarity mechanism in general. In this respect, the Chamber remarked that the literal interpretation of the said article, as proposed by the Respondent, does not reflect neither the *ratio legis* of the legislator nor the relevant underlying principle of the article. In fact, the Chamber underlined that the aforementioned article should be interpreted according to its overall aim. As a consequence, the Chamber remarked that the theory of the teleological interpretation should be followed, that is, its primary purpose. The Chamber underlined that the solidarity mechanism is meant to foster the training of young players by awarding a contribution that will be distributed to all clubs that have trained the player throughout his entire sporting activity.
9. In light of the aforementioned, the deciding authority was of the unanimous opinion that the provisions regarding the solidarity mechanism cannot be circumvented by means of an exchange of players.
10. The entitlement to receive the solidarity contribution in favour of the Claimant being granted, the members of the Chamber noted that the problem in the present litigation is to establish and settle on, if possible, the amount of money indirectly agreed upon between the parties for the transfer of the player K to the Respondent.
11. In this respect, the members of the Chamber considered all the elements in the present matter. In particular, the Chamber took note of the transfer compensation

paid by V to A for the transfer of the player K, amounting to EUR 6,465,500, as basis of the Claimant's assessed transfer value, as well as of the transfer compensation paid by L to M for the transfer of the player J, amounting to EUR 3,150,000, as basis of the Respondent's assessed transfer value. Furthermore, the Chamber took into consideration the dates of the transfers of the player K to V and to the Respondent, as well as the date of the transfer of the player J to the Respondent.

12. As a result, the Chamber concluded that the average between the transfer compensation paid for the transfer of the player K to V (EUR 6,465,000) and the transfer compensation paid for the transfer of the player J to the Respondent (EUR 3,150,000) is the most appropriate value in order to calculate the relevant solidarity contribution i.e. the solidarity contribution in question shall be calculated on the basis of the assessed transfer compensation of EUR 4,800,000 (EUR 9,600,000 : 2 = EUR 4,800,000).
13. After having established the amount to take into account for the calculation of the solidarity contribution, the Chamber referred to art. 21 in connexion with Annex 5 of the Regulations, according to which the new club of the player shall distribute 5% of the relevant compensation as solidarity contribution to the club(s) involved in the training and education of the player, reflecting the number of years the player was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays.
14. Consequently, the members of the Chamber acknowledged that the Claimant claimed 45% of 5% of the assessed value of the transfer compensation, plus default interest at a rate of 5% *per annum* as from the moment on which the payment fell due.
15. Therefore, the Chamber referred to art. 1 of Annex 5 of the Regulations, and took note of the age of the player, the football season and the effective period in which he was trained by the Claimant. In particular, the Chamber established that the period to be considered for the solidarity contribution in the present matter are the entire seasons 1995/1996 – 1999/2000.
16. As a result, the Chamber decided that in accordance with the breakdown provided for in art. 1 of Annex 5 of the Regulations, the Claimant is entitled to receive 45% of 5% of the assessed transfer compensation in the amount of EUR 4,800,000 as solidarity contribution from the Respondent.
17. In view of all the above, the Chamber concluded that the Respondent has to pay to the Claimant a solidarity contribution of EUR 108,000 for the transfer of the player K to the Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, G, is partially accepted.
2. The Respondent, L, has to pay to the Claimant, G, the amount of EUR 108,000 plus interests at the rate of 5% per year applicable as from 5 February 2006 **within 30 days** as from the date of notification of this decision.
3. Any further claims lodged by the Claimant, G, are rejected.
4. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.
5. The Claimant, G, is directed to inform the Respondent, L, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

Note relating to the motivated decision (legal remedy):

According to article 63 par. 1 of the FIFA 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 21 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, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

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

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For the Dispute Resolution Chamber

Jérôme Valcke
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Encl. CAS directives