

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 19 February 2009,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Philippe Piat (France), member

Mick McGuire (England), member

Mario Gallavotti (Italy), member

Reinhard Rauball (Germany), member

(refrained from participating to the deliberations)

on the claim presented by the

B FF

as Claimant

against the club,

S,

as Respondent

regarding the solidarity contribution related to the
transfer of the player A

I. Facts of the case

1. According to the player passport issued by the B FF (hereinafter: the Claimant) the first career registry of the player, A (hereinafter: the player), born on 10 September 1982, occurred on 13 August 2001 for the B club, C, for which he remained registered until 18 December 2001. Furthermore, the said player passport indicates that from 1 January 1994 until 12 August 2001 no records were found regarding the player's registration.
2. The B sportive season follows the calendar year and runs from January to December.
3. On 3 August 2005, the player was registered at the G Football Federation for the G club, S (hereinafter: the Respondent).
4. On 13 June 2007, the Claimant lodged a claim at FIFA against the Respondent. In particular, the Claimant requested the amount of EUR 56,140, corresponding to 56,14% of the 5% solidarity contribution related to the transfer of the player from the B club, R, to the Respondent in July 2005. In this regard, the Claimant stated that a transfer compensation of EUR 2,000,000 had been agreed between the Respondent and R.
5. The Claimant based its claimed right to receive the above-mentioned amount on the fact that the player's career could not be linked to any club for the period comprehended between 1 January 1994 and 12 August 2001.
6. In its response, the Respondent rejected the claim of the Claimant. In particular, the Respondent emphasised that the player had not played organised football in any club between 1994 and 2001, i.e. until 2001, when, at the age of almost 19, he had joined C. In this regard, the Respondent referred to the contents of a declaration of the player dated 18 February 2008 confirming the aforementioned allegation.
7. In its replica, the Claimant stated that in B, most players start their careers in unknown clubs of their neighbourhood, schools i.e. clubs which are not affiliated to the Claimant. The Claimant asserted that the player had for sure been trained and educated by a club, however, by a club or a kind of "football school" which was not affiliated to the Claimant and which was therefore not entitled to claim solidarity contribution, even though those clubs performed a crucial task in B football. In this respect, the Claimant stated that it contributed to the training and education of young players by supporting such non-affiliated clubs through youth and development programmes.
8. Therefore, the Claimant is of the opinion that the member associations of FIFA are entitled to claim the solidarity contribution on behalf of such non-affiliated entities.
9. Furthermore, the Claimant pointed out that the non-application of the solidarity mechanism in the event that the player's career history could not be traced would contravene the FIFA regulations, according to which 5% of the transfer compensation should be distributed as a solidarity contribution.

10. Moreover, the Claimant put forward that in accordance with the FIFA regulations an association had only to prove that none of its affiliated clubs was entitled to claim the solidarity contribution, i.e. that no link could be established between a player and a club. However, it was not necessary to prove that a player had actually been trained and educated by a club.
11. In its duplica, the Respondent reiterated its statement expressed beforehand maintaining that the player was not trained by a club during the missing years of his registration.
12. Finally, for the sake of completeness of the file, FIFA invited the Claimant to elaborate on what the player was doing during the period comprehended between the seasons of 1994 and 2001 and to provide evidence that the player was in fact trained in B during this period.
13. In this regard, the Claimant basically referred to its previous position.
14. On 27 January 2009, after the phase of investigation had already been closed, the Claimant provided FIFA with a statement of the player dated 22 January 2009 confirming that during the period comprehended between 1994 and 2001 he played football in amateur competitions, mainly for the public school he attended in B.
15. At the same time, the Claimant amended its original claim and requested the proportion of the solidarity contribution to which the B club, C, would be entitled for the period between 13 August until 18 December 2001. In this respect, the Claimant argued in particular that C renounced its right to receive its proportion of the solidarity contribution in question.

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, the Chamber took note that the present matter was submitted to FIFA on 13 June 2007. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2005; hereinafter: the 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, the B FF, in connection with the transfer of the professional player, A, during the course of a contract.

3. In this respect, having in mind that one of the members of the Chamber refrained from participating to the deliberations, the deciding authority also referred to art. 24 par. 2 of the Regulations on the Status and Transfer of Players (edition 2008), according to which the Chamber shall adjudicate in the presence of at least three members, including the chairman. As a result, with the present formation, the relevant formal prerequisite was met.
4. Furthermore, and taking into consideration that the player was registered with his new club, the Respondent, on 3 August 2005, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, the Chamber 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 matter was submitted to FIFA on 13 June 2007, the previous edition of the regulations (edition 2005; hereinafter: the Regulations) is applicable to the matter at hand as to the substance.
5. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging that the Claimant requested its proportion of the solidarity contribution in connection with the transfer of the player from the B club, R, to the Respondent in July 2005.
6. First and foremost, the Chamber took note that the Claimant requests the amount of EUR 56,140 as solidarity contribution based on the fact that no link could be established between the player and any club for the period comprehended between 1 January 1994 (season of his 12th birthday) and 12 August 2001 (season of his 19th birthday).
7. In this regard, the Chamber emphasised that as established in art. 21 of the Regulations in connection with Annex 5 of the Regulations, as a general rule the new club of the player has to distribute as a solidarity contribution 5% of any compensation paid to the previous club to the club(s) involved in the training and education of the player in proportion to the number of years the player has been registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays.
8. However, the Chamber underlined that in the present case, it was the B FF, i.e. an association, and not a club, which claimed the payment of the relevant solidarity contribution. Therefore, it had in particular to analyse whether the conditions set forth in art. 2 par. 3 of Annex 5 of the Regulations were fulfilled.
9. The Chamber recapitulated that the aforementioned provision stipulates that if a link between a professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the association(s) of the country where the professional was trained.

10. On this basis, the Chamber pointed out that, at first, it had to analyse whether the time frame of 18 months for the possible establishment of a link between a professional player and a club had already elapsed after the transfer of the player to the Respondent, which was a prerequisite contained in art. 2 par. 3 of Annex 5 of the Regulations.
11. To that regard, the members of the Chamber stated that the transfer of the player from the B club, R, to the Respondent had apparently taken place in July 2005. Furthermore, the Chamber referred to art. 2 par. 1 of Annex 5 of the Regulations, which stipulates that the solidarity contribution to the training club(s) should be paid by the new club no later than 30 days after the player's registration, which was, *in casu*, on 3 August 2005.
12. In view of the aforementioned, the Chamber took note that the required time frame of 18 months for the possible establishment of a link between the player and a training club had elapsed and that therefore, the Claimant was, in principle, entitled to claim the relevant proportion of the 5% pertaining to the solidarity contribution.
13. In continuation, the Chamber took note of the fact that, in support of its claim, the Claimant had submitted a copy of the player passport according to which in the period from 1 January 1994 until 12 August 2001 no record could be found with regard to the registration of the player.
14. Consequently, the members of the Chamber acknowledged that as asserted by the Claimant, no link could be established between the player and any of the clubs affiliated to the Claimant that allegedly trained him during the aforementioned period.
15. In this context, the Chamber duly considered the arguments of the Claimant. In particular, the Chamber took note that the Claimant argued that the player had for sure been trained and educated by a club, however, by a club or a kind of "football school" which is not affiliated to the Claimant and which is therefore not entitled to claim solidarity contribution, even though those clubs perform a crucial task in B football. Equally, the Chamber observed that according to the Claimant an association had only to prove that none of its affiliated clubs was entitled to claim the solidarity contribution, i.e. that no link could be established between a player and a club. However, it was not necessary to prove that a player had actually been trained and educated by a club.
16. To that regard, the Chamber deemed it appropriate to refer to art. 2 par. 3 of Annex 5 of the Regulations according to which the solidarity contribution shall be paid to the association of the country where the professional was trained "[i]f a link between the Professional and any of the clubs that ***trained him*** cannot be established within 18 months of his transfer ..." (emphasis added).
17. On the basis of the aforementioned wording, the members of the Chamber were eager to emphasise that the Regulations clearly and unambiguously request for the player to have been trained in football during the period of time in which no link between the professional player and any of the clubs that trained him can be established. Only such understanding

can properly reflect the aim and *ratio* of the solidarity mechanism which is to reward the clubs investing in the football training and education of young players. In other words, if prior to enter into football a player practised no sport at all or another sport, that training cannot be compensated within the football structures.

18. Moreover, the Chamber deemed it equally important to stress that the aforementioned provision of the Regulations (cf. point II., 16. above) explicitly and beyond any doubts mentions that, under the required circumstances, *“solidarity contribution shall be paid to the association(s) ... where the Professional **was trained** ...”* (emphasis added). Also the norm in question clearly refers to clubs that **trained him** (the player).
19. Consequently, it is indeed a clear requirement established by the provision in question that evidence for the player’s football training in the country of the association concerned has to be provided by the Claimant. Without such evidence, one of the essential prerequisites listed in art. 2 par. 3 of Annex 5 of the Regulations is not fulfilled, which, according to the Chamber, must undoubtedly result in the dismissal of any claim of the association concerned for solidarity contribution.
20. Alleged not further specified or corroborated “training” in a possibly specific environment yet falling outside the well-defined structures of organised football cannot be considered as sufficient evidence in that regard. In this respect, for the sake of good order, the Chamber was eager to emphasise that the Claimant had not even provided any kind of evidence for such “training” to have been provided to the player.
21. As a result, the Chamber unanimously concluded that, contrary to the Claimant’s position, it is an association’s responsibility not only to demonstrate that no link could be established between a professional and a club but also to give evidence for the player to have actually been trained in football by a club during the relevant period of time, if it intends to claim part of the solidarity contribution.
22. Therefore, if there are no records found with regard to the registration of the player and no evidences are provided that the player was clearly trained in football by a club during the relevant period of time, the new club of the player is not obliged to pay any solidarity contribution for the period where no records were found.
23. In this respect, the Chamber analysed in particular the statements of the player submitted to FIFA by the Claimant and the Respondent respectively and acknowledged that the player, on the one hand, declared that he had not played organised football in any club between 1994 and 2001 (cf. statement provided by the Respondent dated 18 February 2008) and, on the other hand, he confirmed that during the period comprehended between 1994 and 2001 he had played football in amateur competitions, mainly for the public school he attended in B (cf. statement provided by the Claimant dated 22 January 2009).
24. Taking into account the above, the Chamber pointed out that the player had changed his statement with regard to the fact that he played kind of organised football between 1994

and 2001 during the course of the proceedings depending on the party that asked him to confirm their respective position. Therefore, the Chamber concluded that none of the said statements of the player could be considered as credible.

25. As a consequence, the Chamber stressed that in the case at hand the Claimant had failed to provide FIFA with adequate documentary evidence which would have clearly indicated that the player was indeed trained in football by any club during the period in which no records regarding his registration could be found.
26. On the basis of all these considerations, the Dispute Resolution Chamber unanimously concluded that its recent jurisprudence must be confirmed and therefore, the claim of the Claimant for the solidarity contribution for the period from 1 January 1994 until 12 August 2001 must be rejected.
27. Finally, the Chamber acknowledged that the Claimant in its amended claim requested in addition also the proportion of the solidarity contribution corresponding to the player's training during the period between 13 August until 18 December 2001, to which the B club, C, with which the player had been registered during the relevant period of time, had allegedly renounced its entitlement.
28. In this respect, the Chamber acknowledged that the player was registered at the G Football Federation for the Respondent on 3 August 2005. Furthermore, the Chamber took note of the fact that this additional claim was submitted to FIFA on 27 January 2009.
29. Consequently, the Chamber emphasized that on the basis of the documents on file and in accordance with art. 2 par. 1 of the Regulations the solidarity contribution in question appears to have fallen due on 2 September 2005, i.e. 30 days after the player's registration for his new club.
30. Then the Chamber referred to art. 25 par. 5 of the Regulations, according to which the Dispute Resolution Chamber shall not hear any case subject to the Regulations if more than two years have elapsed from the event giving rise to the dispute.
31. In view of the above, the Chamber concluded that between the assumed origin of the aforementioned additional claim on 2 September 2005 and its submission to FIFA by the Claimant on 27 January 2009, more than two years have elapsed and therefore, the said additional claim for solidarity contribution cannot be heard.

III. Decision of the Dispute Resolution Chamber

1. The additional claim of the Claimant, the B FF, pertaining to the period between 13 August and 18 December 2001, is not admissible.
2. To the extent that is admissible, the claim of the Claimant, the B FF, is rejected.

Note relating to the motivated decision (legal remedy):

According to art. 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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Encl. CAS directives