

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 22 July 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Theo van Seggelen (Netherlands), member

Jon Newman (USA), member

Ivan Gazidis (England), member

Guillermo Saltos Guale (Ecuador), member

on the claim presented by the club

S,

as Claimant

against the club

T,

as Respondent 1

and the club

V,

as Respondent 2

regarding training compensation related to
the transfer of the player D

I. Facts of the case

1. The Football Federation of Z (FFZ) confirmed that the player, D (hereinafter: *the player*), born on 26 July 1989, was registered for its affiliated club, S (hereinafter: *the Claimant*), from 1 March 1998 until 14 August 2007 as an amateur.
2. The football season in the country Z runs from 1 July until 30 June of the following year.
3. By means of a correspondence dated 6 February 2009, the Football Federation L (FFL) informed FIFA that the player was registered for the club, T (hereinafter: *the Respondent 1*), as a professional player on 15 August 2007. According to the Football Federation L, the player signed an employment contract valid until 31 August 2010. The Football Federation L also informed FIFA, that the player had been transferred on a loan basis to club V (hereinafter: *the Respondent 2*) on two occasions: the first time until 15 November 2007 and the second time until 15 November 2008, without specifying the starting dates of the respective loans.
4. The Football Federation L confirmed that the Respondent 1 belonged to the category 4 and that the Respondent 2 belonged to the category 3 (indicative amount of EUR 10,000 for category 4 and of EUR 30,000 for category 3 per year within UEFA) during the season 2007/08.
5. Upon specific request of FIFA, on 9 February 2010, the Football Federation L maintained that the Respondents 1 and 2 have *“different membership and therefore they are two legal entities concerning their affiliation to the Football Federation L.”* The Football Federation L also informed FIFA that the player had been registered for the first time for the Respondent 2 on 1 July 2007.
6. On 3 March 2010, upon a second request of FIFA, the Football Federation L confirmed that the player had signed an employment contract valid *“from 27 July until 31 August 2010”* with the Respondent 1 and that the said contract had been registered at the Football Federation L on 30 July 2007. The Football Federation L added that *“From 30 July 2007 to 10 August 2007 clearance to play Doubles championship in V”* and that the player was registered on loan for the Respondent 2 from 28 March 2008 until 10 November 2008 and again from 12 March 2009 until 1 December 2009.
7. On 25 April 2008, the Claimant lodged a claim against the Respondents 1 and 2 before FIFA claiming its proportion of training compensation. The Claimant maintained that the player had been registered for the first time as a professional and, therefore, requested the payment of an amount of EUR 120,000, plus 5% of interest, from the Respondents 1 and 2 composed as follows: EUR 30,000 (3 X

10,000) for the seasons 2001/2002, 2002/2003 and 2003/2004 and EUR 90,000 (3 X 30,000) for the seasons 2004/2005, 2005/2006 and 2006/2007.

8. In this respect, the Claimant explained that, on 15 August 2007, the International Transfer Certificate (ITC) of the player had been issued by the Football Federation Z in favour of the Football Federation L, so that the player could be registered as a professional for the Respondent 1. In this respect, the Claimant remitted a correspondence dated 10 October 2007 addressed by the Football Federation L to the Football Federation Z confirming the registration of the player as a professional for the Respondent 1 until 31 August 2010. Furthermore, the Claimant added that, whilst the Respondents 1 and 2 might be two legal entities, they have the same contact details. In that context, the Claimant affirmed that the coach of the Respondent 1 appeared on the Respondent 2's website as a member of its technical staff. As a consequence, the Claimant was of the opinion that the Respondents 1 and 2 tried to circumvent the application of the provisions on training compensation by registering, at the first place, the player for the Respondent 1, which is a category 4 club and thus avoiding to pay any training compensation, before registering the player three months later for the Respondent 2, a category 3 club. Thus, the claimed amount for the seasons 2004/2005 until 2006/2007 is based on the training costs that would have been incurred by a category 3 club, although the Respondent 1 is a category 4 club.
9. On 26 May 2008, the Respondent 2 rejected the claim lodged by the Claimant by means of a correspondence signed by Mr A, Director, and on a letterhead mentioning: "[...] VJ football club" and in which it was stated that the Claimant did not respect the player's human rights.
10. On 6 November 2009, without being invited to do so, the Claimant reiterated its argumentation and continued mentioning that the Football Federation Z had been informed on 1 November 2007 by the Football Federation L that the Respondent 1 concluded a loan agreement with the Respondent 2 regarding the player valid until 15 November 2007. In the same correspondence, the Football Federation L clarified that the Respondent 1 was the youth club of the Respondent 2.
11. Furthermore, the Claimant added that the Football Federation L's correspondence dated 6 February 2009 (cf. point no. 3 above) did not mention the starting date of the loan in favour of the Respondent 2 and that, according to the said letter, the loan should have ended on 15 November 2008. However, according to the Claimant, the player had, as a matter of fact, never played for the Respondent 1 or, at least, that such information could not be established. The Claimant held that the player played for the Respondent 2 already on 22 October 2007 as well as on 11 March 2008. To corroborate the foregoing, the Claimant provided FIFA with internet releases from the Respondent 2's apparent official website, which

mention that the player played for the Respondent 2 on the aforementioned dates. Furthermore, the Claimant stated that the player continued playing for the Respondent 2 after 15 November 2008 regularly, *i.e.* during the whole year of 2009. Indeed, the Claimant remitted to FIFA another release from the website uefa.com, mentioning that the player played on 19 August 2009 for the Respondent 2 in the UEFA Champions' League Qualifying Round as well as an internet release from soccerassociation.com mentioning that the player was regularly fielded from January 2009 until November 2009 for the Respondent 2.

12. In addition, and with regard to the link between the two country L clubs, the Claimant argued that on the website "xxx.com" the contact details of the Respondents 1 and 2 are similar. Finally, the Claimant declared that the coach of the Respondent 1 appears as the coach of the youth team presented on the Respondent 2's website.
13. In reply to the claim, on 25 March 2010, the Respondent 1 claimed that the Respondents 1 and 2 are two different clubs. According to the Respondent 1, the player expressed his will to be transferred from the Claimant because of the latter's actions and behaviour and, in that context, provided FIFA with a signed declaration of the player dated 17 March 2010 corroborating the foregoing. Moreover, the Respondent 1 asserted that the player had been transferred on a loan basis to the Respondent 2 without further specifications regarding starting and/or ending dates. Finally, the Respondent 1 rejected the claim on the basis that the Claimant had allegedly not fulfilled its obligations and violated sporting principles and Human Rights. The position of the Respondent 1 was signed by Mr A, Director, on the letterhead: "VJ football club".
14. On 1 April 2010, the Claimant adhered to its position and underlined the contradictory information provided by the Football Federation L in its correspondence dated 1 November 2007 addressed to the Football Federation Z (cf. point no. 10) and in its correspondence dated 3 March 2010 addressed to FIFA (cf. point no. 6 above). Thus, the Claimant stressed that the player did apparently not play for the Respondent 1 between 11 August 2007 and 23 March 2008. The Claimant reiterated that the player appeared to have played for the Respondent 2 on 22 October 2007 and 11 March 2008 (cf. point no. 11). Furthermore, the Claimant was of the opinion that, despite the fact that the two clubs from country L are two entities - since the two clubs are both competing in the Premier League - , they are *de facto* one entity, since they have allegedly the same contact details, and *de jure*, since the Respondent 1 is the youth team of the Respondent 2. In that regard, the Claimant highlighted that the correspondence dated 25 March 2010 and 26 May 2008 from the Respondents 1 and 2 respectively were both written on the same letterhead containing the same banking data (cf. points no. 9 and 13). Moreover, the Claimant asserted that the player had in fact never played for the Respondent 1. Finally, the Claimant underlined that the player was one of the

most promising talents of the team and that it never refused to allow him to play abroad in order to develop his career underlining that the Claimant was a purely amateur club.

15. On 12 May 2010, the Respondent 1 contacted FIFA, by a correspondence signed by Mr A and on a letterhead stating “[...] VJ football club”, and rejected, once again, the claim of the Claimant holding that the latter should not be entitled to training compensation since the player had no other alternative but to run away from the Claimant in order to continue his career. Finally, the Respondent 1 provided FIFA with copies of the previous correspondence exchanged in the matter. In that respect, the Respondent 1 transmitted a copy of the correspondence dated 26 May 2008 from the Respondent 2 (cf. point no. 9) but mentioning, this time, the Respondent 1 as sender.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (also referred to as DRC or the Chamber) analysed whether it was competent to deal with the matter at hand. In this respect, the Chamber first referred to art. 21 par. 2 and 3 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2008). The present matter was submitted to FIFA on 25 April 2008, thus before the aforementioned Rules entered into force on 1 July 2008. Therefore, the Dispute Resolution Chamber referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (DRC) (hereinafter: *Procedural Rules*; edition 2005) and concluded that the 2005 edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules, which states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2009). In accordance with art. 24 par. 1 in connection with art. 22 lit. d) of the Regulations on the Status and Transfer of Players, the Dispute Resolution Chamber is competent to decide on the present litigation relating to training compensation between clubs belonging to different associations.
3. Furthermore, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2008) and, on the other hand, to the fact that the present claim was lodged on 25 April 2008 and that the player was apparently registered for the Respondent 1 and/or 2 in summer 2007. In view of the aforementioned, the Dispute Resolution

Chamber concluded that the 2005 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance (cf. art. 26 par. 1 and 2 of the Regulations).

4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter.
5. In doing so, the Chamber stated that, as established in art. 1 par. 1 of Annex 4 in combination with art. 2 of Annex 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23rd birthday.
6. Equally, the Chamber went on to recall that, in accordance with art. 1 par. 2 lit. ii) of Annex 4 of the Regulations, training compensation is not due when a player is transferred to a category 4 club.
7. In that context, the Chamber remarked that according to the information provided by the Football Federation L, the Respondent 1 was a category 4 club whereas the Respondent 2 was a category 3 club in the season 2007/2008.
8. In continuation, the DRC underlined that the Claimant requested the payment of training compensation in an amount of EUR 120,000 from the Respondents 1 and 2 maintaining that the latter clubs were *de facto* one entity. Thus, in the Claimant's view, by registering the player, at the first place, for the Respondent 1 – which is a category 4 club – before transferring the player on a loan basis to the Respondent 2, the Respondents 1 and 2 tried to circumvent the provisions on training compensation, since, according to the Claimant, the player had never played for the Respondent 1.
9. Equally, the members of the Chamber noted that the Respondents 1 and 2 contested the Claimant's entitlement to receive training compensation.
10. In view of the contradictory positions of the parties, the Chamber deemed it necessary to examine the very specific circumstances of the case at hand in order to establish the player's career history at the Football Federation L and *a fortiori* to establish whether the Claimant was entitled to receive any training compensation from the Respondents 1 and/or 2. In other words, the DRC had to establish whether the Respondents 1 and 2 tried to circumvent the application of the applicable provisions on training compensation.
11. First of all, the members of the Chamber acknowledged that the Respondents 1 and 2 were both affiliated at the Football Federation L but turned their attention

to the information provided by the Football Federation L throughout the present procedure regarding the player's registration(s) with the Respondents 1 and/or 2:

- the player was registered for the Respondent 1 as a professional player on 15 August 2007 (information dated 6 February 2009),
- the player signed an employment contract with the Respondent 1 valid until 31 August 2010 (information dated 6 February 2009),
- the player had been transferred on a loan basis to the Respondent 2 on two occasions: the first time until 15 November 2007 and the second time until 15 November 2008. The Football Federation L did however not specify the starting dates of the respective loans (information dated 6 February 2009),
- the player had been registered for the first time for the Respondent 2 on 1 July 2007 (information dated 9 February 2010),
- the player had signed a contract with the Respondent 1 and said contract had been registered at the Football Federation L on 30 July 2007 (information dated 3 March 2010),
- *"From 30 July 2007 to 10 August 2007 clearance to play Doubles championship in V"* (information dated 3 March 2010) ,
- the player was registered on loan for the Respondent 2 from 28 March 2008 until 10 November 2008 and again from 12 March 2009 until 1 December 2009 (information dated 3 March 2010).

12. In view of the foregoing, the DRC highlighted the rather imprecise, even contradictory information provided by the Football Federation L regarding the data on the player's registration(s) with its affiliated clubs.

13. In the same context, the DRC went on analyzing the allegations and documentation brought by the Claimant. In that regard, the Chamber acknowledged that the Claimant remitted to FIFA a letter from the Football Federation L dated 1 November 2007, by means of which said Federation informed the Football Federation Z that the player had been transferred on a loan basis from the Respondent 1 to the Respondent 2 until 15 November 2007. In addition, the Claimant provided FIFA with several internet releases from the Respondent 2's website as well as uefa.com or soccerassociation.com, which mentioned that the player had participated in matches for the Respondent 2 on 22 October 2007 and 11 March 2008 as well as the whole year of 2009.

14. Equally, the Chamber turned its attention to the argumentation provided by the Respondents 1 and 2 regarding the registration of the player with one or the other club and noted that the latters remained rather vague, even silent, with regard to the loan agreement(s), in particular their period of validity, that had allegedly been concluded by and between the two clubs. In addition, and recalling the basic principle of burden of proof contained in art. 12 par. 3 of the Procedural Rules, the DRC noted that the Respondent 1 never tried to demonstrate with convincing documentary evidence, that the player had indeed played matches for it.
15. In view of the foregoing, the DRC was eager to enlighten the fact that it could not acquire the certainty that the player had indeed played for the Respondent 1. On the contrary, the Chamber was of the opinion that the Respondent 1 did not appear to have benefited from the training efforts invested by the Claimant and that, in reality, the player had always played for the Respondent 2 since his registration in summer 2007.
16. In continuation, the DRC was eager to point out that the foregoing analysis was corroborated by the confusion created regarding the existence of the Respondents 1 and 2 as being one or two legal entities. In this respect, the DRC recalled that the Football Federation L, in its correspondence dated 1 November 2007 addressed to the Football Federation Z, maintained that the Respondent 1 was the youth club of the Respondent 2. Moreover, the Chamber underlined that the submissions received by the Respondent 1 as well as by the Respondent 2 were signed by the same person, Mr A, Director, and were written on the same letterhead mentioning: “[...] VJ football club”. In addition, in view of the correspondence received from the Respondents 1 and 2, the latters appear to have the same address, the same fax number, the same director as well as one bank account.
17. Thus, although the Respondents 1 and 2 appear both to be registered at the Football Federation L, they created certain confusion for third parties. In the Chamber’s view, this confusion increases the probability that the Respondents 1 and 2 tried to avoid the payment of training compensation by registering the player as a professional with the Respondent 1, which is a category 4 club.
18. Finally, and bearing in mind the purposes followed by the institution of the loan – i.e., as a general rule, young players are transferred on a loan basis to lower category clubs in order for them to gain playing time in order to improve their training and education by a regular practice during matches – the DRC underlined that, *in casu*, the player, being 18 years old in summer 2007, had been immediately loaned from a category 4 to a category 3 club, which is not very common in the world of football.

19. In view of all the above-mentioned considerations, the Chamber considered that the Respondents 1 and 2 tried to circumvent the application of the provisions regarding the payment of training compensation by registering first the player as a professional with the Respondent 1, which is a category 4 club – and, thus with the aim to avoid the payment of any training compensation –, before concluding one, or several, loan agreements in favour of the Respondent 2, which is a category 3 club.
20. Therefore, the DRC deemed that the Respondent 2, for which the player appeared to have effectively always played, which, consequently, profited from the training efforts invested by the Claimant, shall be liable for the payment of training compensation to the Claimant. In this respect, the Chamber underlined that the argumentation brought by the Respondents 1 and/or 2 regarding a possible violation of the player's rights by the Claimant was as such totally irrelevant and, in any case, not corroborated by any documentary evidence (cf. art. 12 par. 3 of the Procedural Rules).
21. In continuation, the Dispute Resolution Chamber recalled that the player, born on 26 July 1989, was registered for the Claimant as from 1 March 1998 until 14 August 2007 as an amateur and that the latter is requesting training compensation in an amount of EUR 120,000 for the training and education of the player incurred during the seasons 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006 and 2006/2007.
22. Turning its attention to the calculation of training compensation, the Chamber referred to art. 3 par. 1 of Annex 4 of the Regulations, which stipulates that the amount payable is calculated on a *pro rata* basis according to the period of training that the player spent with the training club, as well as to art. 5 par. 1 and 2 of Annex 4 of the Regulations, which stipulates that as a general rule, it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself and thus it is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.
23. In continuation, the Chamber took due note that according to the information provided by the Football Federation L, the Respondent 2 was a category 3 club at the time the player was registered for it during the season 2007/08. Consequently, the Chamber took into account that the indicative training costs for a category 3 club and member of a national association affiliated to the Union des Associations Européennes de Football (UEFA) amount to EUR 30,000 (cf. FIFA Circular nr. 1085 dated 11 April 2007).
24. Consequently and taking into account all the above-mentioned elements as well as art. 5 par. 3 of Annex 4 of the Regulations, the Dispute Resolution Chamber decided that the Claimant was entitled to receive training compensation from the

Respondent 2 in an amount of EUR 100,000, plus 5 % of interest and hence, the claim of the Claimant, S, is partially accepted.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, S, is partially accepted.
2. The Respondent 2, V, has to pay to the Claimant, S, the amount of EUR 100,000, as well as 5% interest per year on the said amount as from 15 September 2007 until the date of effective payment, **within 30 days** as from the date of notification of this decision.
3. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further claims lodged by the Claimant, S, are rejected.
5. The Claimant, S, is directed to inform the Respondent 2, V, 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 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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For the Dispute Resolution Chamber

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