Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 June 2011,

in the following composition:

Carlos Soto (Chile), member
Takuya Yamazaki (Japan), member
Mario Gallavotti (Italy), member
Damir Vrbanovic (Croatia), member

on a matter between the club

FC A1,

and the club

FC M,

and the club

FC Y,

as Intervening party

regarding a solidarity contribution dispute related to the transfer of the player G
I. Facts of the case

1. The Football Federation H (FFH) confirmed that the player G (hereinafter: the player), born on 21 February 1985, was registered with its affiliated club, FC A1 (hereinafter: FC A1), as from 2 November 1999 until 19 September 2001 as an amateur.

2. The sporting season in country G runs from 1 September until 31 August of the following year.

3. The Football Association D (The FAD) confirmed that the player was registered on 31 January 2006 with its affiliated club, FC M (hereinafter: FC M), as a professional.

4. On 3 May 2007, FC A1 contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player from the FC Y (hereinafter: FC Y), to FC M in January 2006 for the alleged amount of EUR 7,560,000, plus EUR 500,000 because FC M qualified for the UEFA Cup in May 2008 and “the player was (legally) still in service of FC M under his initial contract of 4,5 years”.

5. In particular, FC A1 requested the payment of EUR 129,953, i.e. 32.24% of 5% solidarity contribution, plus 5% interest p.a. as from 1 March 2006.

6. In its reply, FC M informed FIFA that it is not willing to pay solidarity contribution because FC A1 sent a letter to FC Y dated 28 January 2006, according to which FC A1 waived its right to receive solidarity contribution.

7. This letter stated: “Football Club FC A, legally represented by his president Mr. V declares that FC A, regarding the transfer of Player G from FC Y to FC M, agrees with a payment of EUR 600,000. With this payment FC A waive their rights to receive 10% share in the transfer sum and also their right to receive a solidarity payment according the FIFA regulations. For FC A, The President, Mr V (signature)”.

8. FC A1 denied having renounced its right to receive solidarity contribution and contested having issued this waiver. It argued that the header of the letter and the address details differ and held that it was FC A2 which signed the waiver. Furthermore, it argued that Mr V was never president of FC A1.

9. Furthermore, FC M provided FIFA with a copy of the transfer agreement concluded with FC Y for the transfer of the player dated 30 January 2006. According to this agreement, the transfer compensation amounted to
EUR 7,560,000, payable in three equal instalments of EUR 2,520,000 to be paid on 31 January 2006, on 31 January 2007 and on 31 January 2008. Additionally, the parties agreed upon a bonus payment of maximum EUR 2,000,000 made up of:

a. EUR 500,000 each time FC M reaches the group stages of the UEFA Cup while the player is in the services of the Club under his initial contract of 4,5 years (max. EUR 2,000,000);

b. EUR 1,000,000 when FC M first qualifies for the Champions League (player is in the services of the Club under his initial contract of 4,5 years).

10. Furthermore, the agreement mentions that “In the event of the player being transferred by FC M for a transfer fee, FC Y will receive 25% of any monies received in excess if amounts previously paid or which have accrued due as payable by the date of the transfer including the instalments. In addition FC Y shall receive an additional 25% of the first 500,000 EURO profit.”

11. According to FC M, with respect to the bonus payments, lit. a of the agreement is not applicable “because the player was not in service of FC M as he was transferred to FC C prior to FC M partaking in the Group Stages of this Competition”. Also, FC M stated that “the sell on clause which is included in the Financial Agreement dated 30th January 2006 between FC M and FC Y was not applicable due to the player being transferred to FC C for a transfer fee less than the amount paid to FC Y in the original agreement”.

12. Moreover, FC Y and FC M agreed that FC Y is responsible to pay the solidarity contribution to the previous clubs of the player.

13. On 23 June 2010, FIFA informed all the parties concerned about the jurisprudence of the Dispute Resolution Chamber in similar cases in accordance with which the player’s new club, in casu FC Y, is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training, in casu FC A1, in strict application of the relevant provisions of the Regulations for the Status and Transfer of Players. At the same time, the player’s former club, in casu FC Y, is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player’s new club.

14. In its position, FC Y held that “is of the opinion that it has fulfilled its obligations towards FC A1 and that no solidarity payment is due anymore”. FC Y stated that the above-mentioned waiver “has been concluded to make the transfer of the player possible, since every club involved had to reduce their demands in order to bridge the gap between supply and demand before the end of the concerned transfer period”. Furthermore, it stated that the payment of EUR 600,000 “was based on the transfer agreement between FC Y
and FC A1 dated 14 August 2001 and the solidarity contribution FC A was entitled to as a result of the transfer of the player from FC Y to FC M”. FC Y argued that it paid the said amount to FC A on 7 February 2006. In addition, it stated that “FC A has always behaved and also been treated (Football Federation H among others) as one single club. Next to that it has always claimed to have taken care of the full education of the player till the moment of the transfer of the player so FC Y.”

15. To the position of FC A1 that the waiver was not signed by itself but by FC A2, FC Y stressed that the waiver, the transfer agreement and the ITC only mention FC A and that there is no indication that FC A1 has to be qualified as an individual identity. FC Y concluded that FC A1 and FC A2 is one single football club, representing itself as the party FC A.

16. Furthermore, FC Y stated that FC M qualified for the UEFA Cup in May 2008, at which moment the employment contract between the player and FC M was still in force. However, FC M has not paid the agreed amount of EUR 500,000 to FC Y yet.

17. On 24 November 2010, FIFA asked the Football Federation H whether FC A1 and FC A2 are different legal entities or if they constitute one legal entity.

18. To that, the Football Federation H replied that
   a. “FC A1 is an amateur football club established in XXXX. The full official name of the amateur club is FC A, with Football Federation H. registration number XX.
   b. FC A2 is a professional football club established in XXXX. The full name of the professional club is FC A2” The professional club was established on the initiative of the amateur club FC A which holds 10% of the club’s shares.
   c. The player was first registered with the amateur football club FC A on 2 November 1999 as an amateur football player.”

19. FC Y stated in its reply that “the fact that only one registration number (XX) is mentioned indicates that there are not two different entities registered with the Football Federation H”. FC Y explicitly emphasised again that “there is no single indication that FC A1 must be established as an individual identity”. Furthermore, it stressed that it has made agreements with FC A and followed its obligations on base of these agreements in good trust. “Both FC M and FC Y should not be confronted with internal relationships between different sport departments of FC A which are very unclear and not expressed in any official document, above all the player’s passport.”
20. In spite having been invited by FIFA to do so, FC M did not provide its last position.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: the Chamber or DRC) analysed whether it was competent to deal with the case 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 3 May 2007, thus before the aforementioned Rules entered into force on 1 July 2008. Therefore, the DRC referred to art. 18 par. 2 and 3 of the 2008 and 2005 edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber and concluded that the 2005 edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: 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 and confirmed that in accordance with art. 24 par. 1 and art. 22 lit. d) of the Regulations on the Status and Transfer of Players (editions 2008 and 2009) the Dispute Resolution Chamber is competent to decide on the present with an international dimension concerning the distribution of the solidarity contribution claimed by FC A1 in connection with the transfer of the player during the course of a contract.

3. In addition, the Chamber was eager to emphasise that, contrary to the information contained in the correspondence sent by FIFA to the parties on 13 May 2011 and 29 June 2011, the Chairman of the Chamber on its own initiative refrained from participating in the deliberations of the present case in order to avoid any potential conflict of interest due to the fact that the Respondent is affiliated to the Football Association D (The FAD). In that way, the impartiality and independence of the Chamber were not affected.

4. Furthermore, and taking into consideration that the player was registered with the Respondent on 31 January 2006 and that the present claim was lodged on 3 May 2007, 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 (editions 2009 and 2008), 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.
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 FC A1 lodged a formal complaint at FIFA against FC M, requesting the payment of the solidarity contribution for the period as from 2 November 1999 (season of the player’s 15th birthday) until 19 September 2001 (season of the player’s 17th birthday). In particular, the Chamber took due note that FC A1 requested from FC M the payment of 32.24% of the 5% solidarity contribution, i.e. EUR 129,953 plus 5% interest p.a. on the said amount as from 1 March 2006.

6. Furthermore, the DRC acknowledged that on 30 January 2006, FC Y and FC M signed an agreement for the transfer of the player from FC Y to FC M for an amount of EUR 7,560,000, payable in three equal instalments of EUR 2,520,000 on 31 January 2006, on 31 January 2007 and on 31 January 2008, plus additional bonuses.

7. The Chamber duly noted that FC M asserted having paid the entire amount of EUR 7,560,000 agreed upon as transfer compensation to FC Y and that, therefore, the latter would be responsible to reimburse the relevant solidarity contribution to FC A1. In other words, FC M held that it omitted to deduct 5% of the relevant transfer compensation related to the solidarity mechanism, since the two parties (i.e. FC Y and FC M) agreed that FC Y would be responsible to pay the solidarity contribution to the previous clubs of the player.

8. In continuation, the Chamber went on to recall that according to art. 21 of the Regulations in connection with Annex 5 of the Regulations, if a professional player moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and be distributed by the new club as solidarity contribution 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 clubs between the sporting seasons of his 12th and 23rd birthday.

9. Additionally, the Chamber deemed it appropriate to point out that the agreement of FC Y with FC M by means of which the two parties established that the solidarity contribution will be paid by FC Y, i.e. the player’s former club, is in contradiction to art. 21 and Annex 5 of the Regulations, this is, the relevant article of the Regulations cannot be set aside by means of a contract concluded between the clubs involved in a player’s transfer. In other words, the said article of the Regulations is mandatory and its implementation shall not be affected by clubs involved in a player’s transfer agreeing upon other terms.
10. On account of the above, the Chamber then referred to its well-established jurisprudence applied in similar cases, in accordance with which the player’s new club, i.e. FC M, is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training in strict application of art. 21 and Annex 5 of the Regulations. At the same time, the player’s former club, i.e. FC Y, is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player’s new club, i.e. FC M.

11. Having established that, the DRC duly noted that FC M as well as FC Y pointed out that according to a letter dated 28 January 2006 sent by FC A1 to FC Y, the FC A1 club has renounced to its right to receive its proportion of the solidarity contribution for the transfer of the player from FC Y to FC M (cf. point I.7.).

12. By examining the contents of the aforementioned letter signed by “FC A”, the Chamber acknowledged that, by means of said letter, “FC A” waived its rights to receive 10% share of the transfer sum and a proportion of the solidarity contribution by receiving EUR 600,000 in connection with the transfer of the player from FC Y to FC M.

13. In this respect, the members of the Chamber took note that FC A1 denied having renounced its right to receive solidarity contribution and contested having issued the said waiver. In particular, FC A1 claimed that said document was signed by FC A2 and not by FC A1.

14. Taking into account the mentioned waiver, the members of the Chamber turned their attention to the official documents issued by the Football Federation H as well as to the documentation provided by FC A1.

15. Firstly, the Chamber analysed the documentation provided by the Football Federation H, by means of which it explained that FC A1 is an amateur football club while FC A2 is a professional football club, which was established on the initiative of the amateur club FC A1 as a public limited company, of which the said amateur club holds 10% of the shares.

16. Additionally, the Chamber noted that the player passport issued by the Football Federation H mentioned “FC A” as the name of the club with which the player was registered for the period as from 2 November 1999 until 19 September 2001. Moreover, the International Transfer Certificate (ITC) for the transfer of the player issued by the Football Federation H in favour of the Football Federation K (FFK) mentioned “FC A” as the former club of the player. Consequently, the members of the Chamber noted that the Football Federation H did not make any distinction in any previous document between FC A1 and FC A2.
Furthermore, and considering the general principle of burden of proof, (cf. art. 12 par. 3 of the Procedural Rules), according to which a party claiming a right on the basis of an alleged fact shall carry the burden of proof, the Chamber noted that FC A1 did not provide any documents in order to support its position and was not able to provide sufficient evidence that is a different legal entity than FC A2.

In continuation, the members of the Chamber turned their attention to the argumentation of FC Y concerning FC A1’s appearance in relation with the FC Y. In this respect, the Chamber duly noted the statement of the FC Y that FC A appeared as one single club and claimed to have taken care of the full education of the player until his transfer to FC Y. Finally, in the agreement dated 14 August 2001 concluded for the transfer of the player from the FC A1 to FC Y, FC A1 appeared as “FC A”. Moreover, the power of attorney, which was attached to the claim dated 3 May 2007 of FC A1, only mentioned “FC A” as signing party.

At this point, the Chamber recalled that the waiver dated 28 January 2006 only mentioned “FC A” as renouncing party, without the indication of the club’s year of foundation (cf. point I.7.). Furthermore, the player was registered as an amateur only with “FC A”, which according to the Football Federation H is FC A1. Therefore, FC A2 would have had no legal basis to conclude an agreement with FC Y as the one dated 28 January 2006, i.e. the waiver. In view of all this, the Chamber concluded that FC Y was acting in good faith alleging “FC A” to be the club which effectively trained the player.

As a result and in consideration of the above-stated, the members of the Chamber concluded that FC A1 and FC A2 have to be considered as one legal entity and therefore the waiver dated 28 January 2006 is to be considered as document issued by this legal entity and, therefore, to be taken into account for the decision of the present matter.

On account of all the foregoing considerations, the Chamber decided that the claim of FC A1 is rejected.

### III. Decision of the Dispute Resolution Chamber

The claim of the club FC A1 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:
Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
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Tel: +41 21 613 50 00
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For the Dispute Resolution Chamber:

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Jérôme Valcke
Secretary General

Encl. CAS directives