

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 1 February 2012,

in the following composition:

Geoff Thompson (England), Chairman

Rinaldo Martorelli (Brazil), member

David Mayebi (Cameroon), member

Philippe Diallo (France), member

Essa M. Saleh Al Housani (United Arab Emirates), member

on the claim presented by the club,

P,

as Claimant

against the club,

FC A,

as Respondent

regarding solidarity contribution in connection with the national transfer of the
player M

I. Facts of the case

1. According to the player passport issued by the Football Association of P (FAP), the player, M (hereinafter: *player*), born on 5 December 1988, was registered with the club, P (hereinafter: *Claimant*), as from 19 July 2000 until 21 February 2007.
2. The relevant football seasons in country P during the period of time the player was registered with the Respondent started and ended as follows:
 - 2000/2001 season: as from 12 August 2000 until 20 June 2001
 - 2001/2002 season: as from 18 August 2001 until 5 June 2002
 - 2002/2003 season: as from 10 August 2002 until 24 May 2003
 - 2003/2004 season: as from 9 August 2003 until 15 May 2004
 - 2004/2005 season: as from 7 August 2004 until 28 May 2005
 - 2005/2006 season: as from 6 August 2005 until 6 May 2006
 - 2006/2007 season: as from 4 August 2006 until 26 May 2007
3. The Football Association A (FAA) confirmed that the player was registered with the club, FC A (hereinafter: *Respondent*), on 17 July 2008.
4. According to the Claimant, in July 2008, the club, H, concluded a transfer agreement with the Respondent for the definitive transfer of the player.
5. On 23 April 2010, the Claimant contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player concerned from club H to the Respondent, on the basis of an alleged transfer compensation of EUR 16,250,000. In particular, the Claimant requested the payment of EUR 465,058.15 plus interest at a rate of 5% per year.
6. The Claimant first of all stated that FIFA has competence to decide on the present matter, since the Claimant and the Respondent are clubs belonging to different national associations and, therefore, the dispute has an international dimension.
7. Furthermore, the Claimant stated that its request for solidarity contribution is primarily based on articles 4, 14 and 15 of the Football Association A's 2008/2009 "*Regulations on General Transfer Provisions, training compensation and solidarity contribution*" (hereinafter: *FAA Regulations*). The Claimant outlined that the Football Association A had implemented in its regulations a solidarity mechanism system similar to the solidarity mechanism system contained in the FIFA Regulations on the Status and Transfer of Players (hereinafter: *FIFA Regulations*). The Claimant argued that, in accordance with the constant jurisprudence of the Dispute Resolution Chamber (DRC), the pertinent solidarity mechanism system implemented in the Football Association Regulations should therefore also be applied to clubs belonging to different associations. More particularly, the Claimant referred to the decision of the

DRC dated 21 November 2006, in which the DRC considered that: *“In this respect, the Chamber explained that in case an association would decide to implement at national level in its own regulations a solidarity mechanism, like the one contained in the relevant FIFA Regulations, the pertinent system would obviously also have to be applied to training clubs belonging to different associations. The Dispute Resolution Chamber would thus be in a position to protect the right of such foreign clubs, even in cases where the transfer at the basis of a claim would be an internal one”*.

8. Moreover, the Claimant submitted a translation of the Football Federation A Regulations and outlined the, in its view, relevant provisions:

“Article 4 – Solidarity contribution:

1) If a professional player is transferred before the expiry of his contract to another professional football association, the latter professional football association shall distribute 5% of the compensation payable to his former professional football association as a solidarity contribution among the clubs for which the player was authorized to play between the age of twelve and twenty-three, in accordance with the provisions of these Regulations.

2) The compensation which the professional football association receives as a result of the premature termination of the player’s contract with the transferred player, shall be decisive for the amount of the solidarity contribution.

Article 14 – Calculation of solidarity contribution

If a professional player is transferred to another professional football association during the term of his player’s contract, the solidarity contribution of 5% of the compensation mentioned in art. 4 subsection 2 of this regulation shall be distributed among the clubs with which the player was registered as a player as follows:

- *Association year in which the player reached the age of 12: 5%*
- *Association year in which the player reached the age of 13: 5%*
- *Association year in which the player reached the age of 14: 10%*
- *Association year in which the player reached the age of 15: 10%*
- *Association year in which the player reached the age of 16: 10%*
- *Association year in which the player reached the age of 17: 10%*
- *Association year in which the player reached the age of 18: 10%*
- *Association year in which the player reached the age of 19: 10%*
- *Association year in which the player reached the age of 20: 10%*
- *Association year in which the player reached the age of 21: 10%*
- *Association year in which the player reached the age of 22: 10%*

The distribution is calculated pro rata for the number of months a player was registered as a player with the entitled club.

2.a. if a professional player:

- has not reached the age of 23 years and/or
- has been trained by a foreign club,

the solidarity contribution referred to in article 4 of these Regulations shall, in deviation from article 14 subsection 1 of these Regulations, be reduced with half a percent per year for each year that the player:

- is younger than 23 year and/or
- has been trained by a foreign club.

b) For the years that a player is 12 and 13 years of age, the solidarity contribution shall be reduced by a quarter of a per cent.

c) If a situation applies as set forth in the second indent of this paragraph, the distribution per association year shall be calculated pro rata for the number of months that a player was registered as a player with the foreign club and the number of months that he was registered as a player in the country A.

Article 15 - Payment

1. A professional football association that has to pay a solidarity contribution under these Regulations is enjoined to pay the contribution to the entitled club(s) within thirty days of registration of the player.

2. If a professional football association does not comply with the provisions of subsection 1 Football Association A shall pay the entitled club(s) at first request and Football Association A will then have a claim on the professional football association. The request must be submitted in writing to the association's board stating the grounds for the claim."

9. In the alternative, the Claimant requested the DRC to recognize its claim based on the FIFA Regulations, since art. 1.1 of the FIFA Regulations stipulates that FIFA has established global and binding rules, one of those rules being art. 1.2, which stipulates that the regulations of national associations shall provide for a system to reward the clubs investing in the training and education of young players. Therefore, it is evident that FIFA never intended to create a category of clubs which invest in the training and education of young players, but would not be rewarded for such investment.
10. Finally, the Claimant stressed that the solidarity mechanism is intended to foster the training of young players by awarding all the clubs that trained the player throughout his career, that the underlying principle of the solidarity contribution is universal by nature and that the *ratio legis* within the football community is that a foreign club may not be discriminated. Also, the Claimant asserted that the principles of European Law do not permit discriminatory treatment of the transfer of players, regardless of whether this transfer takes place within a single member state or not and that it is discriminatory to apply the discount for foreign clubs only as implemented in art. 14 par. 2 of the Football Association A Regulations.

11. In its reply, the Respondent rejected the claim of the Claimant stating that the Football Association A is an association and that the regulations of the Football Association A only apply and refer to the members of the Football Association A. Evidently, the Claimant is not a member of the Football Association A as only clubs participating in the country A leagues can be members of the Football Association A. Hence, the Respondent argued that the Claimant cannot derive any rights from the Football Association A Regulations.
12. As far as the applicability of the FIFA Regulations is concerned, the Respondent argued that the FIFA Regulations only apply to international transfers. In this regard, the Respondent referred to the FIFA Commentary on the Regulations on the Status and Transfer of Players, which states that *"the provisions on solidarity contribution apply only in the event of a player transferring from a club affiliated to one association to another club affiliated to another association (i.e. international transfers). If the player transfers between two clubs affiliated to the same association, the solidarity contribution is not applicable unless the association concerned has included a clear clause in its own regulations, acknowledging the obligation to pay a solidarity contribution as a consequence of domestic transfers"*. The Respondent argued that the Football Association A has not included a "clear clause" in its regulations stating that solidarity contribution also applies to non-members of the Football Association A. In fact, the Respondent argued that the Football Association A has expressly stipulated in its regulations that the Football Association A Regulations only apply to members of the Football Association A and to national transfers. In this context, the Respondent referred to the decisions rendered by the Court of Arbitration for Sport (CAS) in CAS 2007/X/XXXX and CAS 2007/X/XXXX in which, according to Respondent, it was ruled that with respect to national transfers there is no obligation to pay solidarity contribution to non-members of an association based on the FIFA Regulations.
13. Moreover, the Respondent stated that art. 1.2 of the FIFA Regulations merely stipulates that national associations should include a provision with respect to solidarity mechanism in their national regulations, but sets no requirements to the contents and scope thereof. Also, the principle of solidarity contribution is not included in art. 1.3 of the FIFA Regulations, and, hence, the principle regarding solidarity contribution is not binding at national level.
14. Finally, the Respondent emphasized that the Football Association A Regulations do not conflict with European Law and are not discriminating; the limitation and range of the applicability of the Football Association A Regulations derive solely from the nature of association law. Under country A law, an association is free to determine who its members are and the absence of a legal basis for the Claimant to receive solidarity contribution is not attributable to the content of the solidarity mechanism provisions in the

Football Association A Regulations, but to the Respondent's lack of membership of the Football Association A.

15. In its replica, the Claimant reiterated that the fact that the Claimant is not a member of the Football Federation A does not constitute a valid reason to reject the Claimant's claim, especially in light of the specificity of sport. In this context, club P referred to the contents of the earlier mentioned DRC decision as well as to the decision of CAS in CAS 2007/X/XXXX, the latter stipulating that *"(...) prove clearly that the FIFA system on solidarity does not find direct application to domestic transfers if the national federation do not provide for any national regulations on it"*.
16. Moreover, the Claimant pointed out that the argument of the Respondent that the Football Association A Regulations exclusively apply to Football Association A members is incorrect. In this respect, the Claimant indicated that in accordance with the constant jurisprudence of CAS *"the interpretation of the rules of a sport association has generally to be objective and always begin with the wording of a rule, which is the object of the interpretation"* and that *"based on a systematic analysis, the Panel shall determine that the interpretation given to the rules does fit into the context of the whole regulations"* (CAS 2009/X/XXXX). In this regard, art. 4.2 of the Football Association regulations stipulates that *"(...) distribute to the clubs, where the player was registered as entitled to play, between the age of twelve and twenty three"*. The Claimant pointed out that the Football Association A chose to use the undefined term *"the clubs"* and added *"where the player was registered as entitled to play between the age of twelve and twenty three"*. Hence, the Claimant is of the opinion that the language used by the Football Association A is clear; there is no restriction to exclusively distribute solidarity to members of the Football Association A *i.e.* non-affiliated clubs are not excluded from receiving solidarity contribution.
17. In addition, the Claimant pointed out that the Football Association A chose at its own discretion to incorporate the FIFA system as they had confirmed in a fax addressed to the Football Association P that *"In our national regulations we have indeed incorporate a solidarity mechanism likewise to the one in the FIFA RSTP"*.
18. Finally, the Claimant referred to the decision of CAS in CAS 2008/X/XXXX which stipulates that: *"In principle, sport federations can freely establish their own provisions. However, there are limits to this autonomy. In particular the relevant organs when creating new rules and regulations are bound by the limited imposed on them by higher ranking norms, in particular the association's statutes. This follows from the principle of legality, also established in CAS Jurisprudence, according to which regulations of a lower level may complement and concretize higher ranking provisions, but not*

amend nor contradict or change them". In view of the foregoing, the Claimant argued that the Football Association A cannot distinct between country A clubs and foreign clubs, as the higher ranking provisions of FIFA do not entail such a distinction either.

19. In its duplica, the Respondent argued that the Claimant did not substantiate its statement that, due to the specificity of sport, the non-membership of the Claimant is not a valid reason to reject the claim of the Claimant. In any case, such argument does not justify setting aside a clear rule based on association law and should therefore be disregarded.
20. As to the Claimant's argument that according to art. 14 of the Football Association A Regulations the obligation to distribute solidarity contribution is not restricted to members of the Football Association A, the Respondent emphasized that according to the Football Association A Statutes, the Football Association A Regulations are solely applicable to its members. In this sense, the Respondent referred to the definitions of the Football Association A Regulations and stated that the term "club" refers to "*an amateur association and/or professional football club accepted as a member of the Football Association A and (in that capacity) participating in the competition organized by the Football Association*". Moreover, the Respondent stated that art. 14 of the Football Association A Regulations explicitly provides that non-members of the Football Association are excluded from the distribution of solidarity contribution relating to a transfer on national level.
21. Finally, the Respondent reiterated that the principle regarding solidarity mechanism is not included in art. 1.3 of the FIFA Regulations and therefore not binding at national level.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 23 April 2010. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 2 and par. 3 of the Procedural Rules).
2. Subsequently, the DRC referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in conjunction with art. 22 lit. d) of the Regulations on the Status and Transfer of Players (edition 2010) the Chamber is competent to deal with the matter at stake which is of an

international dimension, the Claimant and the Respondent being affiliated to different associations, and concerns the distribution of solidarity contribution claimed by the Claimant in connection with the national transfer of the player to the Respondent.

3. Furthermore, 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 par. 2 of the Regulations on the Status and Transfer of Players (editions 2008, 2009 and 2010) and considering that the present claim was lodged on 23 April 2010 as well as that the player was registered with his new club on 17 July 2008, the 2008 version of the said Regulations (hereinafter: *FIFA Regulations*) is applicable to the present matter as to the substance.
4. In continuation, and entering into the substance of the matter, the DRC started by acknowledging that the Claimant is claiming the amount of EUR 465,058.15 from the Respondent as solidarity contribution in connection with the national transfer of the player from the country A club, Club H, to the Respondent, equally a country A club.
5. More particularly, the Chamber observed that the Claimant's claim is primarily based on the Football Association A Regulations, which, according to the Claimant, contains a solidarity mechanism system similar to the solidarity mechanism system contained in the FIFA Regulations. Equally, the Chamber noted that, in the alternative, the Claimant claims the payment of solidarity contribution on the basis of the FIFA Regulations.
6. With due consideration to the above, the Chamber first of all turned its attention to the question as to whether or not the Claimant, based on the FIFA Regulations, is entitled to receive solidarity contribution from the Respondent in connection with the national transfer of the player from club H to the Respondent.
7. In this respect, the Chamber referred to art. 1 of the FIFA Regulations, in particular, to its par. 1 which stipulates that the FIFA Regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.
8. In addition, and in light of the arguments put forward by the Claimant, the Chamber found it vital to emphasise that, in accordance with art. 1 par. 2 of the FIFA Regulations, the member associations of FIFA are not obliged to implement a solidarity mechanism system in their national regulations identical or similar to the solidarity mechanism system contained in the FIFA Regulations; the member associations are merely directed to provide for a

system that rewards clubs investing in the training and education of young players. In which manner a member association subsequently decides to reward clubs investing in the training and education of young players is left to the full discretion of the member association. In other words, the member associations do not necessarily have to implement a solidarity contribution mechanism identical or similar to the solidarity contribution mechanism contained in the FIFA Regulations. In this context, the Chamber wished to emphasize, in particular, that the solidarity contribution mechanism is not included in the list of obligatory provisions to be put in place at national level.

9. For the sake of good order, the Chamber pointed out that the above interpretation of the FIFA Regulations has also been confirmed by the CAS in *CAS 2007/X/XXXX FC D v/FC I & FIFA* where the Panel confirmed that *“a FIFA rule intended to apply, according to its clear wording, only to “international transfer” is not made applicable to “internal transfers” merely because national associations are bound to observe the FIFA rules or because FIFA has a regulatory and supervisory function over national association”*. Equally, the Panel considered that *“the clear wording of the FIFA Regulations leaves no room for a different solution”*.
10. Hence, in accordance with the clear wording of art. 1 par. 1 and par. 2 of the FIFA Regulations as well as in accordance with the well-established jurisprudence of the DRC, which was confirmed by the CAS, the Chamber concurred that the solidarity mechanism system contained in the FIFA Regulations only applies to international transfers of players and not to national transfers of players. Consequently, the Chamber decided to reject the Claimant’s claim for solidarity contribution based on the FIFA Regulations.
11. Secondly, the Chamber turned its attention to the question as to whether or not the Claimant, based on the Football Association A Regulations, is entitled to receive solidarity contribution from the Respondent in connection with the national transfer of the player from club H to the Respondent.
12. More particularly, the Chamber observed that it had to examine whether a country P club, *i.e.* a club not affiliated to the Football Association A, can derive rights from the regulations laid down by the Football Association A, *i.e.* from the regulations established by an association to which it is not affiliated.
13. The Chamber was of the firm and unanimous opinion that this cannot be the case. Indeed, establishing that the rules and regulations of an association would also apply to an entity not affiliated to such association would clearly be incompatible with the general principles of association law, in particular, with the principle of freedom of association which establishes that every association can, in principle, accept or refuse any applicant for membership. In the particular matter at hand, it has been the Football Associations A’s stance to

only accept those clubs as members that are participating in the country A league *i.e.* in the leagues organized under the auspices of the Football Association A, and, thus, to limit the application of its regulations and statutes to that particular scope. Taking into consideration that the Claimant is not a member of the Football Association A, the Chamber sees no legal basis to uphold the assumption that regulations issued by an association are applicable to legal entities that are not affiliated to the relevant association. Furthermore, the members of the Chamber considered that the DRC is not in a position to extend the rules and regulations laid down at national level in the context of art. 1 of the FIFA Regulations to foreign clubs by analogy.

14. What is more, from the Football Association A regulations and statutes it is evident that the Football Association A has excluded non-affiliated clubs from its solidarity mechanism system. Contrary to the Claimant's opinion, this does not constitute a discriminatory treatment, but simply derives from the freedom of association.
15. Finally, and as to the arguments put forward by the Claimant in connection with principles of European Law, the Chamber highlighted that the Claimant is a club from country P, *i.e.* a country that is no member of the European Union. Therefore, the Chamber deemed that a further analysis of these specific arguments is not relevant.
16. On account of the above, the Chamber deemed that the Claimant cannot derive an entitlement to solidarity contribution from the Football Association A Regulations. In view of the foregoing, the Dispute Resolution Chamber decided to reject the Claimant's claim for solidarity contribution based on the Football Association A Regulations.
17. Lastly, the Chamber referred to art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the DRC relating to disputes regarding training compensation and the solidarity mechanism, costs in the maximum amount of CHF 25'000 are levied. It is further stipulated that the costs are to be borne in consideration of the parties' degree of success in the proceedings and that, in accordance with Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.
18. In respect of the above, the Chamber held that the amount to be taken into consideration in the present proceedings is EUR 465,058.15 related to the claim of the Claimant. Consequently, the Chamber concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annexe A of the Procedural Rules).

19. As a result, and taking into consideration that the claim of the Claimant has been rejected, the Chamber concluded that the Claimant has to bear the costs of the current proceedings.
20. Considering the above, and taking into account the complexity of the case, the Chamber determined the costs of the current proceedings to the amount of CHF 10,000, which shall be borne by the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Club P, is rejected.
2. The final amount of costs of the proceedings in the amount of CHF 10,000 is to be paid by the Claimant to FIFA, CHF 5,000 of which have already been paid as advance of costs. Consequently, the amount of CHF 5,000 is to be paid by the Claimant within 30 days of notification of the present decision, to FIFA to the following bank account with reference to case no.:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

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
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

Jérôme Valcke
Secretary General

Enclosed: CAS directives