

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 7 September 2011,

in the following composition:

Geoff Thompson (England), Chairman
Michele Colucci (Italy), member
Joaquim Evangelista (Portugal), member
Ivan Gazidis (England), member
Zola Majavu (South Africa), member

on the claim presented by the club,

A,

as "Claimant"

against the club,

S,

as "Respondent"

regarding solidarity contribution in connection with the international transfer
of the player C

I. Facts of the case

1. The Football Federation B (hereinafter: "FFB") confirmed that the player C (hereinafter: "player"), born on 9 August 1985, was registered with its affiliated club, Club A (hereinafter: "Club A" or "Claimant") as from 23 February 2005 until 14 March 2005, as from 3 May 2005 until 9 August 2005 and as from 1 January 2006 until 14 August 2006.
2. The Football Federation B also confirmed that in country B, the sporting season follows the calendar year.
3. On 18 February 2010, Club A contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player concerned from the club Club M (hereinafter "Club M") to the club S (hereinafter "Club S" or "Respondent").
4. Club A is not in a position to establish the amount of the player's transfer nor the date on which said transfer occurred. It therefore only stated that the transfer took place in 2008 and that it claims 13,18% of the 5% to be deducted from the unknown transfer amount.
5. In spite of having been invited to present its position with regard to the claim lodged against it, as well as to submit a copy of the transfer agreement at stake, no reply was ever received from Club S.
6. The Football Association of S (hereinafter: "FAS"), for its part, confirmed that the player was registered with Club S on 31 August 2008.
7. By means of a decision dated 13 October 2010, the Dispute Resolution Chamber sentenced Club S to submit a copy of the transfer agreement it was reported to have signed with Club M for the player's transfer.
8. From the contents of the agreement submitted accordingly by Club S, it can be seen that said agreement, dated 7 August 2008, was concluded between the player, Club S and a company referred to as "Company X " (hereinafter: Company X) and apparently consists, *inter alia*, in a loan of the player's federative rights to Club S by company X for one sportive season plus an option for the definitive transfer of the player's federative rights to the Respondent.
9. According to the agreement, Club S had to pay the amount of EUR 200,000 to company X for the recruitment of the player for the sole sporting season 2008/09.
10. In this context, and for the sake of completeness, Club S was asked to clarify as to whether any other amount was paid to company X or to any club for the transfer of said player from Club M to Club S.
11. Club S replied that no other amount was ever paid to company X or to any club with regard to the player's transfer.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as the 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 18 February 2010. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008 (hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 21 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 2010), the Dispute Resolution Chamber is competent to decide on the present litigation concerning solidarity contribution between clubs belonging to different associations.
3. Furthermore, and taking into consideration that the player was registered with the Respondent on 31 August 2008, 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 2008, 2009 and 2010), the 2008 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.
4. 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 the above-mentioned facts of the case and the documentation on the file.
5. First of all, the Chamber recalled that the player, born 9 August 1985, was registered with the Claimant as from 23 February 2005 until 14 March 2005, as from 3 May 2005 until 9 August 2005 and as from 1 January 2006 until 14 August 2006.
6. In continuation, the Chamber took note that the Claimant asserted that it was entitled to receive solidarity contribution from the Respondent as a result of the player's transfer from Club M to the Respondent. More particularly, the Chamber duly noted that the Claimant is requesting to receive the amount corresponding

to 13,18% of the 5% to be deducted from the unknown transfer amount paid in connection with the player's transfer to the Respondent.

7. The Chamber also noted that within the frame of the investigation on the case, which led to the first decision passed by the Dispute Resolution Chamber on 13 October 2010, and despite having been asked to do so by the FIFA Administration, the Respondent had never taken position as to the substance of the present dispute. Therefore, the Chamber concluded that, in this way, the Respondent renounced to its right to defence and accepted the allegations of the other party.
8. At this stage, the Chamber deemed relevant to recall that on the basis of art. 21 in combination with Annexe 5 of the Regulations, in particular its art. 1, 5% of any compensation paid in relation with the movement of a football player has to be deducted from the total amount of this compensation and distributed by the new club as solidarity contribution to the club(s) involved in the player's training and education over the years.
9. Following its analysis of the situation at hand, the Chamber could verify that after having been sentenced by a decision from the Dispute Resolution Chamber dated 13 October 2010 to submit a copy of the transfer agreement it has signed for the transfer of the player of the reference, the Respondent had proceeded accordingly.
10. Yet, from the contents of the agreement at stake, the Chamber remarked that said agreement was only signed by the player, the Respondent and the company called company X.
11. Also, the members noted that said agreement stipulates that the Respondent had to pay EUR 200,000 to company X so as to trigger the player's transfer to it for the sporting season 2008/09.
12. Furthermore, the Chamber deemed useful to recall that upon specific requests of the FIFA Administration following the receipt of the copy of the above-mentioned transfer agreement, the Respondent had indicated that it had not paid any other sum apart from the amount of EUR 200,000 it paid to company X in relation with the player's transfer, be it to company X or to any club.
13. In view of the above, the Chamber concluded that apparently, no amount had been paid by the Respondent to the player's former club, *i.e.* the Club M, and that the sole payment which took place in relation with the player's transfer was remitted by the Respondent to company X.

14. However, the Chamber highlighted that in order to avoid a practice that could lead to circumvent the obligation to pay solidarity contribution, *i.e.* by remitting sums to companies or any third party instead of football clubs, and in view of the fact that said payment of EUR 200,000 by the Respondent to company X was undoubtedly made in order to implement the player's transfer to the Respondent, the members of the Chamber unanimously came to the conclusion that such payment was subject to the payment of solidarity contribution to the player's club(s) who contributed to his education and training. In this regard, the Chamber also referred to the contents of art. 1 of Annexe 5 of the Regulations, which provides that the solidarity contribution consists in the deduction of 5% of any compensation (emphasis added) paid in the context of the transfer of a player.
15. On account of the above considerations, the Chamber decided that the Respondent is liable to pay solidarity contribution to the Claimant.
16. In view of the above, the Chamber wished to refer to the Regulations, in particular the contents of art. 1 of Annexe 5, which stipulates that the solidarity contribution shall be deducted from the total amount of compensation paid and distributed *pro rata temporis* by the new club to the club(s) involved in the player's training and education over the years.
17. In this respect, the Chamber reverted to the information contained in the file and took due note that the Football Federation B confirmed that the player C, born on 9 August 1985, was registered with the Claimant as from 23 February 2005 until 14 March 2005, as from 3 May 2005 until 9 August 2005 and as from 1 January 2006 until 14 August 2006, hence representing three months during the football season of his twentieth birthday and seven months during the football season of his twenty-first birthday.
18. In addition, it also noted that according to the Football Federation B, the football season in country B follows the calendar year.
19. On account of all the above, the Dispute Resolution Chamber decided that the Respondent is liable to pay to the Claimant solidarity contribution in the amount of EUR 833.
20. What is more, the Chamber wished to point out that the transaction/agreement at stake, *i.e.* the payment of a sum by the Respondent to the company X so as to organise a football player's transfer, might represent a breach by the Respondent of the contents of art. 18bis par. 1 of the Regulations, which stipulates that no club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.

21. In this regard, and for the sake of completeness, the Chamber wished to recall that art. 18bis par. 2 of the Regulations stipulates that the FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in par. 1 of article art. 18bis of the Regulations.
22. In view of the above, and considering the situation at stake, the Dispute Resolution Chamber considered relevant to forward the case at hand to the FIFA Disciplinary Committee for its consideration.
23. The Dispute Resolution Chamber concluded his deliberations by rejecting any further claim of the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Club A, is partially accepted.
2. The Respondent, Club S, has to pay to the Claimant the amount of EUR 833 **within 30 days** as from the date of notification of this decision.
3. In the event that the aforementioned amount is not paid within the stated time limit by the Respondent, interest at the rate of 5% per year will apply as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further claim lodged by the Claimant is rejected.
5. The costs of the proceedings in the amount of CHF 2,000 are to be paid by the Respondent to FIFA **within 30 days** of notification of the present decision to the following bank account with reference to case no.:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH 27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

6. The Claimant is directed to inform the Respondent 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.

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:

Jérôme Valcke
Secretary General

Enclosed: CAS directives