

## Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 27 February 2013,

in the following composition:

**Geoff Thompson (England)**, Chairman  
**Rinaldo Martorelli (Brazil)**, member  
**Takuya Yamazaki (Japan)**, member  
**Theodoros Giannikos (Greece)**, member  
**Essah M. Saleh Al-Housani (United Arab Emirates)**, member

on the claim presented by the club,

**Club Z**, Country R

as *Claimant*

against the club,

**Club C**, Country M

as *Respondent*

regarding training compensation in connection with the player O

**I. Facts of the case**

1. According to the player passport issued by the Football Federation of country the player O (hereinafter: *the player*), born on 17 October 1989, was registered with the club Z from country R (hereinafter: *Claimant*), as from 10 March 2008 until 15 November 2011 as a professional.
2. The relevant sporting seasons in country R ran as follows:
  - Season 2007: as from 7 April until 4 November;
  - Season 2008: as from 5 April until 18 November;
  - Season 2009: as from 14 March until 15 November;
  - Season 2010: as from 10 April until 7 November;
  - Season 2011: as from 2 April until 13 November.
3. According to an official confirmation of the Football Federation of country M the player was registered with its affiliated club C (hereinafter: *Respondent*), on 23 February 2012.
4. According to the information contained in the Transfer Matching System (TMS), the Respondent belonged to the category 2 (indicative amount of EUR 60,000 per year) at the time the player was registered with it.
5. On 19 March 2012, the Claimant lodged a claim before FIFA requesting the payment of training compensation from the Respondent indicating that the Respondent tried to circumvent the rules governing training compensation. In particular, the Claimant is claiming training compensation in the amount of EUR 240,000 from the Respondent.
6. The Claimant explained that on 1 February 2012 the club F (hereinafter: *involved club* or *club F*), a club belonging to the 4<sup>th</sup> category, requested the player's International Transfer Certificate (ITC) from the Claimant.
7. Subsequently, according to the Claimant, the Respondent requested the ITC from club F already on 5 February 2012, *i.e.* 4 days later. The Claimant holds that the player did not play a single game for the involved club, did not participate in any of the trainings of said club and that it is, thus, clear that the Respondent tried to circumvent the payment of training compensation to the Claimant. In this context, the Claimant referred to a decision of the Dispute Resolution Chamber (DRC) rendered in a similar matter.

8. To its claim, the Claimant enclosed several internet extracts from January 2012, which indicated that the player had signed for the Respondent. Amongst those extracts, there were two extracts from the Respondent's website dated 9 and 14 January 2012, the extract of 9 January 2012 containing, *inter alia*, the following information: *"The another newcomer of club C is the player of the national team of countr R and club Z – player O. (...) Last autumn the scouts from club C were watching the performance of player O both in club Z and the national team"*.
9. In its reply to the claim, the Respondent acknowledged that it signed an employment contract with the player on 6 February 2012, however, it rejected the claim for training compensation stating that the player was given a letter from the involved club which indicated that the player was a free agent and that *"[the involved club] training compensation does not require that it is not contrary to the requirements of procedural rules"*. The Respondent further stated that according to the Regulations on the Status and Transfer of Players, training compensation is only payable to the last club.
10. In this context, the Respondent enclosed a letter from the involved club dated 9 February 2012 which stipulated that *"We kindly inform you that the football player has settled up with our club and has no obligations towards us. Our club will not demand any compensation for his training in the future"*.
11. According to the information contained in TMS, the player was *"engaged out of contract, free of payment"* by the involved club from the Claimant on 1 February 2012. On 10 February 2012, the Respondent entered the transfer instruction *"engage out of contract, free of payment"* into TMS and the ITC was issued on 15 February 2012. Furthermore, the date of the termination of the employment contract between the player and the involved club was 5 February 2012 and the reason for such termination was indicated as *"early termination mutually agreed between player and club"*.

## **II. Considerations of the Dispute Resolution Chamber**

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the matter at hand. In this respect, the Chamber referred to art. 21 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*; edition 2012). The present matter was submitted to FIFA on 19 March 2012, thus before the aforementioned Rules entered into force on 1 December 2012. Therefore, the Dispute Resolution Chamber concluded that the 2008 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 2012). 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 2010 and 2012) and, on the other hand, to the fact that the present claim was lodged on 19 March 2012 and that the player was registered for the Respondent on 23 February 2012. In view of the aforementioned, the Dispute Resolution Chamber concluded that the 2010 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.
5. In this respect, the DRC underlined that the Claimant requested the payment of training compensation in an amount of EUR 240,000 from the Respondent, maintaining that the transfer of the player to the involved club only pursued to circumvent the provisions on training compensation. The Chamber noted that the Claimant stated that, as a matter of fact, the ITC of the player was requested by the Respondent only four days after the player was registered with the involved club.

6. Equally, the members of the Chamber observed that the Respondent contested the Claimant's entitlement to receive training compensation asserting that the claim was groundless, since the player was transferred from the involved club to the Respondent. In this regard, the Chamber underlined that the Respondent provided a letter from the President of the involved club stating that said club "*will not demand any compensation for his training in the future*". The Respondent outlined that the Claimant was not the former club of the player and, therefore, no training compensation is due.
7. Consequently, and 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 and had to establish whether the Claimant was entitled to receive training compensation from the Respondent. In other words, the DRC, given the circumstances, had to establish whether or not the Respondent tried to circumvent the application of the provisions on training compensation.
8. In this context, the Chamber first of all referred to the rules applicable to training compensation and stated that, as established in art. 20 of the Regulations as well as in art. 1 par. 1 of Annexe 4 in combination with art. 2 of Annexe 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 or when a professional is transferred between clubs of two different associations before the end of the season of the player's 23rd birthday. In case the latter occurs, art. 3 par. 1 sent. 3 of Annexe 4 of the Regulations sets forth that training compensation will only be owed to the player's former club for the time he was effectively trained by that club.
9. Equally, the Chamber went on to recall that, in accordance with art. 2 par. 2 lit. ii) of Annexe 4 of the Regulations, training compensation is not due when a player is transferred to a category 4 club.
10. Turning to the specific circumstances of the present matter, the members of the Chamber were eager to emphasize that it was undisputed between the parties that the player was registered and de-registered with the Claimant, the involved club and the Respondent as follows:
  - On 15 November 2011: de-registered with the Claimant;
  - On 1 February 2012: registered with the involved club;
  - On 5 February 2012: de-registered with the involved club; and

- On 23 February 2012: officially registered with the Respondent by the Football Federation of country M.

In this regard, the Chamber underlined that the player was registered as a professional with the involved club for only 4 days, that the employment contract between the involved club and the player had been terminated after 4 days and that already on the day following the termination of the contract with the involved club, *i.e.* 6 February 2012, the Respondent had concluded an employment contract with the player.

11. Secondly, the Chamber observed the documents enclosed to the Claimant's claim, respectively dated 9 and 14 January 2012, this is, before the registration of the player with the Respondent. The Chamber noted that said documents i) confirmed the inclusion of the player in the list of players that were attending the Respondent's training camp in Yalta in January 2012, and ii) confirmed that the Respondent had already welcomed the player to its team before his registration with club F. The DRC further noted that these documents were extracts of the Respondent's website and equally considered that the Respondent, in its reply, had not provided any clarifications in relation to the content of such documentation.
12. Hence, considering that the content of the relevant documentation remained uncontested by the Respondent, the Chamber deemed that it was clear that in fact the player had already joined the Respondent in January 2012, *i.e.* prior to the player's registration with club F in February 2012.
13. In continuation, the Chamber turned its attention to the argumentation provided by the Respondent, which merely indicated that club F had stated that the player was a "free agent" and that therefore no training compensation is due. In this respect, the Chamber outlined that the Respondent did neither provide any comments in relation to the allegation of the Claimant regarding the alleged circumvention, nor did the Respondent provide an explanation why the player had moved from a club ( from country R ) playing in the 1<sup>st</sup> league in country R to a club from country X participating in the 3<sup>rd</sup> league in country X for only 4 days, before transferring to a club participating in the 1<sup>st</sup> league in the country M.
14. In view of the above, in particular taking into account that it could be established that the player had already joined the Respondent prior to his registration with club F and that the player had never started to render his services to club F

15. as well as considering that the Chamber had not been provided by the Respondent with an explanation clarifying the unusual sequence of transfers of the player, the Chamber came to the unanimous conclusion that the Respondent tried to avoid the payment of training compensation to the Claimant.
16. Thus, in view of all the above-mentioned considerations, the Chamber considered that the Respondent tried to circumvent the application of the provisions regarding the payment of training compensation.
17. Therefore, the DRC deemed that the Respondent, for which the player appeared to have effectively always played following his de-registration in country Z, which, consequently, profited from the training efforts invested by the Claimant, shall be liable for the payment of training compensation to the Claimant.
18. In conclusion, the DRC determined that the Respondent shall be liable for the payment of training compensation to the Claimant.
19. Turning its attention to the calculation of training compensation, the Chamber referred to art. 3 par.1 of Annexe 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 Annexe 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.
20. The members of the Chamber recalled that the player, born on 17 October 1989, was registered for the Claimant as from 10 March 2008 until 15 November 2011 as a professional and that the Claimant is requesting training compensation in the amount of EUR 240,000 for the training and education of the player incurred during the seasons 2008, 2009, 2010 and 2011. Equally, the Chamber noted that the seasons in country R ran as from April until March of the following year (*i.e.* for 12 months).
21. In continuation, the DRC took due note that according to the information contained in TMS, the Respondent was a category II club at the time the player was registered with it. Consequently, the Chamber took into account that the

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indicative training costs for a category II club and member of a national association affiliated to the Union des Associations Européennes de Football (UEFA) amounts to EUR 60,000.

22. In this respect, the Chamber considered that the player was registered with the Claimant for 1 month (March 2008) during the season of the player's 18<sup>th</sup> birthday and during the complete seasons of the player's 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> birthday, *i.e.* from April 2008 until March 2011.
23. Consequently, and taking into account all the above-mentioned elements, the Chamber decided that the Claimant is entitled to receive training compensation from the Respondent in the amount of EUR 185,000, plus 5% interest as from 12 April 2013 and, hence, the claim of the Claimant is partially accepted.
24. The Chamber concluded its deliberations by rejecting any further claim of the Claimant.
25. Finally, the Chamber referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Dispute Resolution Chamber relating to disputes regarding training compensation and the solidarity mechanism costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings.
26. In this respect, the Chamber reiterated that the claim of the Claimant is partially accepted. Therefore, both the Claimant as well as the Respondent have to bear a part of the costs of the current proceedings in front of FIFA.
27. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.
28. The amount in dispute to be taken into consideration in the present proceedings amounts to EUR 240,000 related to the claim of the Claimant. Therefore, 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).
29. Considering that the case involved various particular factual difficulties and involved a certain specific legal complexity, the Chamber determined the final amount of costs of the current proceedings to the amount of CHF 20,000.

30. In view of all of the above, the Chamber concluded that the amount of CHF 15,000 has to be paid by the Respondent and the amount of CHF 5,000 has to be paid by the Claimant to cover the costs of the present proceedings.

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### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, club Z, is partially accepted.
2. The Respondent, club C, has to pay to the Claimant the amount of EUR 185,000 **within 30 days** as from the date of notification of this decision.
3. In the event that the aforementioned sum is not paid within the stated time limit, interest of 5% *p.a.* will fall due 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 final amount of costs of the proceedings, amounting to CHF 20,000, are to be paid **within 30 days** as from the date of notification of the present decision as follows:
  - 5.1. CHF 15,000 by the Respondent to FIFA to the following bank account with reference to case no. xxxxxxxxx:

UBS Zurich  
Account number (FIFA Players' Status)
  - 5.2. CHF 5,000 by the Claimant to FIFA. Given that the Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the Claimant does not have to pay an additional amount as costs of the proceedings.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under point 2. is to be made and to notify the Dispute Resolution Chamber of every payment received.

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*For the Game. For the World.*

**Note relating to the motivated decision** (legal remedy):

According to art. 67 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