

# **Decision of the Dispute Resolution Chamber (DRC) judge**

passed in Zurich, Switzerland, on 13 December 2010,

by **Philippe Diallo** (France), DRC judge,

on a matter between the club

**S,**

*as Claimant*

and the club

**M,**

*as Respondent*

regarding a solidarity contribution dispute  
related to the transfer of the player R"

## **I. Facts of the case**

1. The Football Federation B (FFB) confirmed that the player R (hereinafter: *the player*), born on 25 January 1984, was registered with its affiliated club S (hereinafter also referred to as *the Claimant*), from 1 January 1996 until 31 March 2001 as an amateur and from 1 April 2001 until 25 August 2005 as a professional. The season in the country B follows the calendar year.
2. The player was registered with the club M (hereinafter also referred to as *the Respondent*) on 1 September 2008.
3. On 15 April 2009, S contacted FIFA claiming its allegedly outstanding proportion of the solidarity contribution in connection with the transfer of the player from the club, A, to the club M allegedly against the amount of EUR 47,200,000. The Claimant stated that it allegedly was entitled to 76.50% of the 5% solidarity contribution and that it had already received the amount of EUR 1,332,421.05 from the club M, which allegedly corresponds to 56.50% of the 5% solidarity contribution.
4. Therefore, club S requested the remaining amount of EUR 472,489.71, which allegedly corresponds to 20% of the 5% solidarity contribution, and an interest rate of 5% p.a. since the day the solidarity payment was due.
5. The club M never answered to the claim of club S. However, on 9 November 2010, after the investigation into the matter had been closed, The Football Federation E stated that according to the club M, the player was allegedly registered as a futsal player with with the club S during a certain period (no evidence provided). The Football Federation E did not file any declaration, by means of which the club C would request The Football Federation E to act on its behalf in the present matter.
6. On 10 November 2010, S contested the allegation that the player was registered with it as a futsal player, referring to the player passport issued by the FFB, which does not mention any registration of the player as a futsal player.

## **II. Considerations of the DRC judge**

1. First of all, the Dispute Resolution Chamber judge analysed whether he was competent to deal with the case at hand. In this respect, the judge first referred to art. 21 par. 1 and 2 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 15 April 2009, thus after aforementioned Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber entered into force on 1 July 2008. Therefore, the judge concluded that the 2008 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 judge referred to art. 3 par. 2 of the Procedural Rules, which states that the jurisdiction of the DRC judge is set out in art. 24 par. 2 of the Regulations on the Status and Transfer of Players (edition 2010). In accordance with art. 24 par. 2 iii) of the aforementioned Regulations, the Dispute Resolution Chamber judge shall adjudicate on disputes relating to solidarity contributions without complex factual or legal issues.
3. Furthermore, the DRC judge 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 judge referred, on the one hand, to art. 26 par. 1 and 2 in connection with art. 29 of the Regulations on the Status and Transfer of Players (edition 2010) and, on the other hand, to the fact that the present claim was lodged on 15 April 2009 and that the player was registered for the Respondent on 1 September 2008. In view of the aforementioned, the judge then referred to art. 26 par. 1 and 2 in connection with art. 29 par. 2 of the Regulations on the Status and Transfer of Players (edition 2009) and concluded that 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 DRC judge and the applicable regulations having been established, the judge entered into the substance of the matter. The judge started by acknowledging the facts of the case as well as the documentation contained in the file.
5. In continuation, the DRC judge duly noted that the Claimant had originally requested solidarity contribution for the training and education of the player incurred between 1 January 1996 and 25 August 2005, i.e. the seasons comprehended between the player's 12<sup>th</sup> and 21<sup>st</sup> birthday. The judge took due note that the Claimant states having received the amount of EUR 1,332,421.05 from the Respondent, and therefore, presently claims the allegedly remaining proportion of solidarity contribution in the amount of EUR 472,489.71, as well as the payment of 5% interest per year since the date the payment should have been made.
6. Moreover, the judge duly noted that, based on the information provided by the Claimant, the player was transferred from the club A to the Respondent for the amount of EUR 47,200,000.
7. In continuation, the DRC judge emphasised that, as established in art. 21 in connection with Annexe 5 of the Regulations, if a professional 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 club(s) between the sporting seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthday.

8. In this respect, the judge took due note that the Football Federation B confirmed that the player R, born on 25 January 1984, was registered with the Claimant from 1 January 1996 until 25 August 2005.
9. With regard to the alleged registration of the player as a futsal player with the Claimant, the DRC judge first referred to art. 12 par. 3 of the Procedural Rules, which states that any party claiming a right on the basis of an alleged fact shall carry the burden of proof. In continuation, the judge took into consideration that the said allegation was contested by the Claimant. Considering the aforementioned, and irrespectively of the fact that the Respondent did not empower The Football Federation E to act on its behalf, the DRC judge concluded that the Respondent carried the burden of proof with regard to the said allegation and that it did not prove the fact that the player was registered as a futsal player with the Claimant.
10. In view of the above, and considering the points II. 5 and 8 above, as well as the fact that the Respondent did not contest the Claimant's claim and had apparently even already paid a substantial share of the solidarity contribution, the judge decided that the Claimant is entitled to receive a proportion of the relevant transfer compensation as solidarity contribution, as well as 5% interest per year on that amount, from the Respondent.
11. Turning its attention to the calculation of the due proportion of solidarity contribution, the judge referred to art. 1 of Annexe 5 of the Regulations, which stipulates that the solidarity contribution reflects the number of years the player was registered with the relevant club between the seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthdays, calculated pro rata if less than one year, in accordance with the table of aforementioned provision.
12. In this respect, the judge concluded that the effective period of training to be considered in the matter at stake corresponds to the information contained in the player passport received from the association of the Claimant, *i.e.* the Football Federation B, which displays that the player was registered with the Claimant for the period as from 1 January 1996 until 25 August 2005, *i.e.* for 9 years in the seasons from 1996 until 2004 in country B and eight months of the season 2005 in country B, and that the aforementioned seasons correspond to the seasons of the player's 12<sup>th</sup> to 21<sup>st</sup> birthdays.
13. Therefore, considering that the Claimant had demonstrated its entitlement to solidarity contribution, and that its statement, that after a partial payment by the Respondent the amount of EUR 472,489 still remained outstanding, was not contested by the latter, the judge determined that this was the amount to be awarded to the Claimant.

14. Equally, the judge emphasized that according to art. 2 par. 1 of Annexe 5 of the Regulations, the deadline for payment of training compensation is 30 days following the registration of the player with the new association.
15. Consequently and taking into account all the above-mentioned elements, the Dispute Resolution Chamber judge decided that the Claimant is entitled to receive solidarity contribution from the Respondent in an amount of EUR 472,489, with 5% interest per year on the said amount as from 2 October 2008 until the effective date of payment.
16. In continuation, the judge referred to art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Dispute Resolution Chamber relating to disputes regarding 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.
17. In this respect, the judge reiterated that the claim of the Claimant is accepted. Therefore, the Respondent has to bear the costs of the current proceedings in front of FIFA.
18. 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.
19. The amount in dispute to be taken into consideration in the present proceedings amounts to EUR 472,489 related to the claim of the Claimant. Therefore, the judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annexe A).
20. Considering the above-mentioned, the judge determined the final amount of costs of the current proceedings to the amount of CHF 25,000.
21. In this respect, the judge took into account that the Claimant had paid the advance of costs in the amount of CHF 5,000 in accordance with art. 17 of the Procedural Rules.
22. In view of all of the above, the judge concluded that the amount of CHF 25,000 has to be paid by the Respondent to cover the costs of the present proceedings. Thereof the amount of CHF 20,000 has to be paid by the Respondent to FIFA and the amount of CHF 5,000 to the Claimant.

### III. Decision of the DRC judge

1. The claim of the Claimant, S, is accepted.
2. The Respondent, M, has to pay to the Claimant, S, the amount of EUR 472,489 as well as 5% interest per year on the said amount as from 2 October 2008 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. The final amount of costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, M, **within 30 days** of notification of the present decision as follows:
  - 4.1 The amount of CHF 20,000 to FIFA to the following bank account with reference to case no. [xxx XX-XXXXX]:

UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A
  - 4.2 The amount of CHF 5,000 to the Claimant, S.
5. The Claimant, S, is directed to inform the Respondent, M, 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.

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#### **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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Markus Kattner  
Deputy Secretary General

Encl. CAS directives