

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 5 February 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Michele Colucci (Italy), member

Johann van Gaalen (South Africa), member

Ivan Gazidis (England), member

Zola Majavu (South Africa), member

on a matter between the club

F,

as Claimant

and the club

R,

as Respondent

regarding the solidarity contribution related to
the transfer of the player A

I. Facts of the case

1. The Football Federation P (FFP) confirmed that the player A (hereinafter: *the player*), born on 1 April 1987, was registered with its affiliated club, F (hereinafter: *F or the Claimant*), from 21 May 1996 until 12 September 2006. The season in P ran from 1 August until 31 July of the following year in the seasons until and including 1998/1999 and from 1 July until 30 June of the following year since 1 July 2000.
2. On 29 August 2007, club R, club X (hereinafter: *X*) and the player A signed a contract for the temporary transfer of the player to club R (hereinafter also referred to as *the Respondent*), starting on 29 August 2007 and expiring on 30 June 2008. The transfer amount for the temporary transfer of the player was established at EUR 300,000. According to art. 4 of the contract, club R was given the option for the definitive transfer of the player, to be exercised until 15 April 2008. The transfer amount for the definitive transfer of the player was established at EUR 1,200,000, to be paid as follows: EUR 600,000 by no later than 31 July 2008 and EUR 600,000 by no later than 31 December 2008. On 1 April 2008, R exercised the option for the definitive transfer of the player.
3. The player was registered with club R on 31 August 2007.
4. On 19 May 2008, F contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player from the club X to R, on 29 August 2007, for the amount of EUR 1,500,000.
5. F requests the amount of EUR 45,000 plus 5% interest p.a.
6. R informed FIFA on 2 September 2008 that it is willing to compensate the solidarity contribution due to the player's former club, but also that it does not want to incur in a double payment or in a mistaken payment. Club R also explained to FIFA that the involved club, X, contacted club R explaining that F renounced to all rights regarding the player while transferring him to X and therefore the solidarity contribution due to F should be paid to X. In order to corroborate this affirmation, R provided FIFA with two faxes received from X dated 17 December 2007 and 19 August 2008, where the latter explained its above-mentioned position and added a copy of the transfer contract dated 20 June 2006 concerning the transfer of the player and signed between F, the company Y and the player. Moreover, R claimed to be confused because of the fact that the aforementioned contract was not signed by X, but by the company Y. Therefore, R asked FIFA to clarify which of the two said clubs is entitled to receive solidarity contribution and in which amount.
7. On 17 February 2009, F stated again its position in front of FIFA holding on to their claim, without answering the points brought up by R.

8. On 4 March 2009, R informed FIFA once again that the player's former club X, is also asking for solidarity contribution for the same period and that the club R does not want to incur in a double payment or a mistaken payment. Furthermore, R provided FIFA again with the fax received from X on 19 August 2008 and asked if the company Y is really the club F. R stated that it is willing to pay the solidarity contribution, but that it does not know to whom and how much to pay.
9. On 15 July 2009, R sent, upon FIFA's request, a copy of the transfer agreement signed between the said club R and the player's former club X, as well as a copy of the fax dated 1 April 2008, in which R informed X that it exercises the option for the definitive transfer of the player.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, the Chamber first referred to art. 21 par. 1 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 19 May 2008, thus before aforementioned Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber entered into force on 1 July 2008. Therefore, the Chamber then referred to art. 18 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2005) 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, 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 2009). In accordance with art. 24 par. 1 and 2 in connection with art. 22 lit. d of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on disputes relating to the solidarity mechanism 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 in connection with art. 29 par. 2 of the Regulations on the Status and Transfer of Players (edition 2009) and, on the other hand, to the fact that the present claim was lodged on 19 May 2008 and that the player was registered for the Respondent on 31 August 2007. In view of the aforementioned, the Chamber concluded that 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.

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 facts of the case as well as the documentation contained in the file.
5. In continuation, the Chamber duly noted that, on the one hand, the Claimant is requesting solidarity contribution for the training and education of the player incurred between 1 August 1998 and 12 September 2006, i.e. the seasons comprehended between the player's 12th and 20th birthday, in the amount of EUR 45,000, as well as the payment of 5% interest per year since the date the payment should have been made.
6. Moreover, the Chamber duly noted that, according to the relevant transfer agreement remitted to FIFA, the player was loaned on 29 August 2007 for the amount of EUR 300,000 from X to the Respondent and that on 1 April 2008, the Respondent exercised the option for the definitive transfer of the player for the amount of EUR 1,200,000.
7. In continuation, the members of the Chamber emphasised that, as established in art. 10 par. 1 and art. 21 in connection with Annexe 5 of the Regulations, if a professional moves during the course of a contract, even if within the frame of a loan, 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 12th and 23rd birthday.
8. In this respect, the Chamber took due note that the FFP confirmed that the player A, born on 1 April 1987, was registered with the Claimant from 21 May 1996 until 12 September 2006.
9. In continuation, the Chamber duly noted that the Respondent is willing to compensate the solidarity contribution due to the player's former club, but also that it does not know to whom and how much to pay. In this respect, the Chamber took note that the Respondent asserts having received correspondence from X, in which the latter explained that the Claimant allegedly had renounced to all "rights" regarding the player while transferring him to X on 20 June 2006.
10. First and foremost, the Chamber was eager to emphasise that since 1 September 2001, the date of the entry into force of the completely reviewed version of the FIFA Regulations for the Status and Transfer of Players (edition 2001) the concept of the so-called sporting, federative or similar "rights" to players does not exist anymore. It was replaced by the principle of maintenance of contractual stability between the contracting parties (cf. Chapter VIII, art. 21 et seqq. of the 2001

Regulations corresponding to Chapter IV, art. 13 et seqq. of the Regulations). In view of the foregoing, and with regard to the allegations of the Respondent, the Chamber stressed that the Claimant would not have been able to renounce to the pertinent "rights" regarding the player, since such "rights" do no longer exist.

11. In view of the above, as well as considering the points II. 6 and 8 above, the Chamber decided that the Claimant is entitled to receive the claimed proportion of the loan compensation as well as of the compensation paid for the definitive transfer of the player in question, as solidarity contribution, from the Respondent.
12. Based on all of the above, the Dispute Resolution Chamber decided that the Respondent must pay to the Claimant the amount of EUR 45,000 (in connection with both the loan and the definitive transfer of the player). However, due to the very specific circumstances of the case, the Chamber decided that the Respondent shall not be required to pay interest on the amount due.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, F, is partially accepted.
2. The Respondent, R, has to pay to the Claimant, F, the amount of EUR 45,000, **within 30 days** as from the date of notification of this decision.
3. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiring of the fixed 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 claims lodged by the Claimant, F, are rejected.
5. The Claimant, F, is directed to inform the Respondent, R, 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.

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

Encl. CAS directives