

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

passed in Zurich, Switzerland, on 11 March 2011,

by **Theo van Seggelen** (Netherlands), DRC judge:

on a matter between the club

**A,**

against the club

**W,**

and the club

**T,**

*as Intervening party*

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

## I. Facts of the case

1. According to the player passport issued by the Federation I the player, M (hereinafter: the player), born on 6 January 1976, was registered with its affiliated club, A (hereinafter: A) as from 29 May 1987 until 30 June 1992. The said player passport indicated as well that the player was registered with club T (hereinafter: T) in the 2007/2008 season, in the country E during the 2008/2009 season and re-registered with T as of the 2009/2010 season.
2. The football season in country I starts on 1 July and ends on 30 June of the following year.
3. According to an official confirmation of the Football Association E the player was registered with its affiliated club, W (hereinafter: W), on 1 September 2008.
4. On 30 August 2010, A lodged a claim in front of FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player from the club, T, to the club, W, for the alleged amount of EUR 1,000,000. In particular, A requested 30% of the 5% of the allegedly agreed transfer compensation of EUR 1,000,000, equivalent to EUR 15,000.
5. In its reply, W indicated that the player was registered on a loan basis and submitted a copy of the loan agreement signed between it and T, which showed that the loan compensation amounted to EUR 600,000, payable in two installments of EUR 300,000 falling due on 15 September 2008 and 1 May 2009. In view of the foregoing, W argued that A was only entitled to receive EUR 9,000. Furthermore, W stated that it had omitted to deduct the 5% solidarity contribution from the loan compensation it had paid to T and, as to the payment of solidarity contribution to A, indicated that *"whilst we are happy to make this payment we would also ask for FIFA's reassurance of their assistance in reclaiming this sum of money from T"*.
6. In view of the above, FIFA informed the parties involved of the jurisprudence of the Dispute Resolution Chamber in similar cases, according to which the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training and that at the same time, the player's former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club.
7. Therefore, W was invited to distribute the relevant proportion of the 5% solidarity contribution of the compensation to A which appeared to have been involved in the player's training. Furthermore, T was invited to reimburse W the relevant proportion of the 5% of the amount of compensation agreed upon with W.
8. In reply to the above-mentioned suggestion, T argued that all solidarity contributions should have been paid by W in accordance with article 4 of the loan agreement which stipulated that: *"The Temporary and Definitive Transfer Fees*

*stated in this Agreement are not inclusive of the Solidarity Contribution and of the Training Compensation (if due) entitlement under the FIFA Regulations. These, as well as any other levies as required by the PL, shall be borne by W alone".*

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

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 30 August 2010. Consequently, 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 (cf. art. 21 par. 2 and par. 3 of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 lit. iii. in conjunction with art. 22 lit. d) of the Regulations on the Status and Transfer of Players (edition 2010) the DRC judge is competent to decide on the present matter which is of an international dimension, has already a clear established jurisprudence, does not contain complex factual or legal issues and concerns the distribution of solidarity contribution claimed by A in connection with the international transfer of the player to W.
3. Furthermore, and taking into consideration that the player was registered with his new club on 1 September 2008, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2010) and considering that the present claim was lodged on 30 August 2010, the 2008 version of the said Regulations (hereinafter: the Regulations) is applicable to the present matter as to the substance.
4. In continuation, and entering into the substance of the matter, the DRC judge started by acknowledging that A is requesting solidarity contribution in the amount of EUR 15,000 based on an alleged transfer compensation of EUR 1,000,000 allegedly paid by W to T in connection with the international transfer of the player.
5. At the same time, however, the DRC judge acknowledged that according to the relevant loan agreement remitted to FIFA the player was transferred on a loan basis by T to W for the amount of EUR 600,000.
6. In this respect, the DRC judge first of all emphasised that, as established in art. 21 in conjunction 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 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 clubs between the seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthday.

7. In continuation, the DRC judge took note that, on the one hand, W stated that it had not retained 5% of the loan compensation and, thus, had paid the total amount of loan compensation to T. In other words, W asserted that it omitted to deduct 5% of the relevant loan compensation relating to the distribution of the solidarity contribution. On the other hand, the DRC judge noted that T asserted that, in accordance with article 4 of the loan agreement, any and all solidarity contributions were due by W, since the said article stipulated that *"The Temporary and Definitive Transfer Fees stated in this Agreement are not inclusive of the Solidarity Contribution and of the Training Compensation (if due) entitlement under the FIFA Regulations. These, as well as any other levies as required by the PL, shall be borne by W alone"*.
8. Taking into account the above arguments, the DRC judge observed that the main issue in the current matter is that T is of the opinion that the total amount of EUR 600,000 is due to it and that, in accordance with article 4 of the loan agreement, W had to pay, on top of the total loan compensation of EUR 600,000, the relevant amounts concerning solidarity contribution to the club(s) involved in the training and education of the player.
9. In this context, the DRC judge referred again to art. 21 and art. 1 of Annexe 5 of the Regulations which clearly stipulates that *"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 (...)"* (emphasis added).
10. In this respect, the DRC judge was eager to emphasize that the solidarity mechanism is a principle well-established in the Regulations, from which the parties signing a transfer or loan contract cannot derogate through the contents of a contract. In other words, the obligation to distribute solidarity contribution cannot be set aside by means of a contract concluded between the clubs involved in a player's transfer. Thus, as for the distribution of the solidarity contribution, the amount to be taken into account when calculating the solidarity contribution payments due to the club(s) involved in the player's education and training, is the amount actually agreed upon as the total compensation payable by the new club to the former club, regardless of any provision to the contrary stipulated in the transfer or loan contract.
11. In this regard, the DRC judge considered that if one would follow T's interpretation of the loan agreement and T's argument that W should pay T the total compensation of EUR 600,000 without deducting any amount(s) in conformity with the rules regarding solidarity contribution, it would mean that, in the present matter, the amount of EUR 600,000 would constitute 95% of the total

amount of compensation for the loan of the player. Consequently, W would be responsible to pay the remaining part of 5% to the club(s) involved in the training and education of the player. The DRC judge stressed that would this line be followed, the total amount of compensation would be EUR 631,578, which, evidently, would be different from the terms of the loan agreement signed between the clubs involved in the loan of the player, which, as stated before, in fact agreed upon a loan compensation of EUR 600,000. Consequently, the DRC judge considered that would the solidarity contribution be calculated in the way T argued, the 5% solidarity contribution would, according to the Regulations, then be calculated on the basis of EUR 631,578 instead of EUR 600,000, a calculation which, in the DRC judge's view, is incorrect as such an approach as to the calculation of the solidarity contribution would destabilize the entire system of the solidarity mechanism and would undermine the legal certainty the Regulations provide. Therefore, a strict application of the rules regarding solidarity contribution should be followed and, hence, 5% should have been deducted from the EUR 600,000 and distributed to the club(s) involved in the player's training and education.

12. Subsequently and directly related to the above, the DRC judge referred to the well-established jurisprudence of the DRC which has to be applied in the present matter, in accordance with which the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training and education in strict application of art. 1 and art. 2 of Annexe 5 of the Regulations. At the same time, according to said well-established jurisprudence, the player's former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club.
13. In light of the above, the DRC judge decided that W is liable to pay the relevant proportion of the 5% solidarity contribution to A and that T must reimburse the same proportion of the 5% solidarity contribution to W.
14. In this regard, having confirmed the above-mentioned obligation incumbent on W, the DRC judge went on to establish the proper calculation of the relevant proportion of solidarity contribution due to A.
15. To that end, the DRC judge referred to art. 1 of Annexe 5 of the Regulations which provides the figures for the distribution of the solidarity contribution, according to the period of time the player was effectively trained by a specific club and taking into consideration the age of the player at the time he was being training and educated by the club(s) concerned.
16. In this respect, the DRC judge recalled that the Federation I had confirmed that the player, born on 6 January 1976, was registered with the A as from 29 May 1987 until 30 June 1992 and that the relevant compensation amounts to EUR 600,000.

17. Consequently, the DRC judge established that, in accordance with the breakdown provided for in art. 1 of Annexe 5 of the Regulations, A is entitled to receive 30% of 5% of the compensation paid by W to T i.e. 30% of 5% of EUR 600,000.
18. In view of all the above, the DRC judge decided that W must pay to A the amount of EUR 9,000 and that T must reimburse the amount of EUR 9,000 to W.
19. The DRC judge concluded his deliberations as to the substance of the matter by rejecting any further claim of the Claimant.
20. Lastly, the DRC judge referred to art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the DRC, including the DRC judge relating to disputes regarding training compensation and the solidarity mechanism, costs in the maximum amount of CHF 25'000 are levied. The relevant provision further states that the costs are to be borne in consideration of the parties' degree of success in the proceedings (cf. art. 18 par. 1 of the Procedural Rules).
21. In respect of the above, and taking into account that the claim of the Claimant has been partially accepted, the DRC judge concluded that W has to bear the costs of the current proceedings in front of FIFA.
22. According to Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.
23. On that basis, the DRC judge held that the amount to be taken into consideration in the present proceedings is EUR 15,000 related to the claim of the Claimant. Consequently, the DRC judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 5,000 (cf. table in Annex A).
24. Considering that the case at hand did not compose any complex factual or legal issues and that it was adjudicated by the DRC judge and not by the DRC, the DRC judge determined the costs of the current proceedings to the amount of CHF 2,500.

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### III. Decision of the DRC judge

1. The claim of A is partially accepted.
2. W has to pay to A the amount of EUR 9,000 within 30 days as from the date of notification of this decision.
3. If the aforementioned sum is not paid by W within the aforementioned deadline, an interest rate 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 its consideration and a formal decision.
4. Any further claim lodged by A is rejected.
5. The final amount of costs of the proceedings in the amount of CHF 2,500 are to be paid by W within 30 days of notification of the present decision, 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: CH 27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A

6. A is directed to inform W immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received.
7. Club T has to reimburse the amount of EUR 9,000 to W within 30 days as from the date of notification of this decision.
8. If the aforementioned sum is not paid by T Club within the aforementioned deadline, an interest rate 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 its consideration and a formal decision.
9. W is directed to inform club T immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge 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  
CH-1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the DRC judge:

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Jérôme Valcke  
Secretary General

Encl. CAS directives