

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 7 April 2011,

in the following composition:

Geoff Thompson (England), Chairman *ad interim*

Michele Colucci (Italy), member

Jon Newman (USA), member

Mario Gallavotti (Italy), member

Todd Durbin (USA), member

on a matter between the club

X,

and the club

FC N,

and the club

Y,

as intervening party

regarding a dispute relating to the solidarity contribution in connection with
the transfer of the player J.

I. Facts of the case

1. The P Football Association (hereinafter: *PFA*) confirmed that the player J (hereinafter: *the player*), born on 5 October 1979, was registered with its affiliate, Club X (hereinafter: *X*), from 7 July 1994 until 26 March 1997.
2. The sporting season in country P follows the calendar year.
3. On 29 June 2004, the Club Y (hereinafter: *Y*), and the Club, FC N (hereinafter: *FC N*), concluded a transfer agreement, by means of which FC N agreed to pay EUR 600,000 as transfer compensation to Y (cf. art. 1 par. 1 of the agreement).

Furthermore, the parties agreed that Y should receive the following amounts for the presence of the player (cf. art. 2 of the agreement):

- if the player stays with FC N in the season 2004/2005, EUR 350,000 on 31 January 2005;
- if the player stays with FC N in the season 2005/2006, EUR 550,000 on 30 September 2005;
- if the player stays with FC N in the season 2006/2007, EUR 575,000 on 30 September 2006;
- if the player stays with FC N in the season 2007/2008, EUR 125,000 on 30 September 2007.

Art. 3 of the agreement stipulates that:

- if a further transfer of the player takes place before 31 August 2005, FC N has to pay to Y the amount of EUR 925,000;
- if a further transfer of the player takes place after 1 September 2005 and before 31 August 2006, FC N pays to Y EUR 475,000.
- FC N pays 20% of the difference between the total amount paid to Y according to this agreement and the new transfer amount.

According to art. 4 par. 2 of the agreement, Y is responsible for paying solidarity contribution.

4. According to a written statement from the Football Federation (hereinafter: *FF*), the player was registered for its affiliated club, FC N on 20 July 2004.
5. On 13 June 2006, X contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player from the Club, Y, to the Club, FC N.
6. In particular, X requested 1% of the total transfer compensation paid by FC N to Y.

7. In its position, FC N stated that X should turn to Y, since the latter is responsible for paying solidarity contribution.
8. On 5 September 2006, X amended its claim. It alleged a transfer amount of EUR 2,200,000. Therefore, it requested 1.25% of the total transfer amount, *i.e.* requested the payment of EUR 27,500.
9. On 14 June 2010, FIFA informed all the clubs involved of its jurisprudence, 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 in strict application of the relevant provisions of the Regulations on the Status and Transfer of Players. 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. Therefore, FIFA invited FC N to distribute the relevant proportion of the 5% solidarity contribution of the transfer compensation to X, and Y to reimburse the club FC N the relevant proportion of the 5% of the compensation agreed upon with FC N.
10. In its replica, X mentioned that the jurisprudence of FIFA regarding such cases is very clear and that in no case the claimant had to ask the club involved for solidarity contribution. Therefore, it asked FC N to pay EUR 7,620, related to 1.27% of the total transfer amount, as solidarity contribution.
11. In its final position, FC N informed FIFA that it agreed to pay 1% of the solidarity contribution to X but after receipt of the reimbursement of Y.
12. Despite having been invited to do so, Y did not provide FIFA with its position regarding the statements of FC N.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC; edition 2005) in conjunction with art. 21 par. 2 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 13 June 2006, as a consequence, the Chamber concluded that the edition 2005 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) are applicable on the matter at hand.
2. With regard to the competence of the Chamber, art. 3 par. 1 of the above-mentioned Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2010). In accordance with art. 1 par. 1 of the aforementioned Regulations, which describes the scope and the field of application of the relevant Regulations, in connection with articles 24 par. 1 and 22 d) of the said Regulations, the Dispute Resolution Chamber shall adjudicate on disputes relating to the solidarity mechanism between clubs belonging to different associations in connection with the international transfer of a professional player.
3. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation concerning the distribution of the solidarity contribution in connection with the international transfer of the professional player, J.
4. Furthermore, and taking into consideration that the player was registered for his new club on 20 July 2004, 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, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2010, 2009 and 2008) and also considering that the present claim was lodged in front of FIFA on 13 June 2006, the 2005 edition of the Regulations for the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
5. In continuation, and entering into the substance of the matter, the members of the Chamber started by acknowledging that X is requesting the payment of EUR 7,620 from FC N as solidarity contribution in connection with the international transfer of the professional player, J, from club Y.
6. Moreover, the Chamber duly noted that according to the Football Federation and the transfer agreement, the player was transferred to FC N on 20 July 2004 for the amount of EUR 600,000.

7. In continuation, the members of the Chamber emphasised that, as established in art. 21 in connection with Annex 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 to 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 clubs between the sporting seasons of his 12th and 23rd birthday.
8. In this respect, the Chamber took due note that the P Football Association confirmed that the player J, born on 5 October 1979, was registered with the Club, X, as from 7 July 1994 until 26 March 1997.
9. In continuation, the Chamber duly noted that FC N asserted having paid the entire amount of EUR 600,000 agreed upon as transfer compensation to Y. In other words, FC N omitted to deduct 5% of the relevant transfer compensation relating to the solidarity mechanism.
10. Moreover, the Chamber observed that the contractual parties, *i.e.* FC N and Y, agreed that Y should be responsible for paying solidarity contribution.
11. In this respect, the Chamber reproached the behaviour of Y, who never took position in the dispute, despite having been asked to do so by the FIFA administration on several occasions. In this way, Y renounced to its right to defence and accepted the allegations of the other parties.
12. Subsequently, it appears from the above-mentioned that solidarity contribution is payable in the matter at hand, but was not paid to X by FC N, who acknowledged having remitted the full payment to Y.
13. Hence, the Chamber referred to its well-established jurisprudence applied in similar cases, in accordance with which the player's new club, *i.e.* FC N, is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training in strict application of art. 1 and 2 of the Annex 5 to the Regulations. At the same time, the player's former club, *i.e.* Y, is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club, *i.e.* FC N.
14. In continuation, in particular with reference to points II.7, 8, 9, 10 and 11 (*cf. supra*), the Chamber decided that X is entitled to receive EUR 7,500 as solidarity contribution from the transfer compensation paid for the transfer of the player.
15. In addition to the foregoing, and in line with its longstanding jurisprudence, the Dispute Resolution Chamber decided that FC N is liable to pay to X the amount of EUR 7,500 as solidarity contribution and that Y must reimburse the amount of EUR 7,500 to FC N.

III. Decision of the Dispute Resolution Chamber

1. The claim of the, Club X, is partially accepted.
2. The Club, FC N, has to pay to the, Club X, the amount of EUR 7,500, **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 annum* will apply as of expiry of the fixed 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 claims lodged by Club X, are rejected.
5. The Club X, is directed to inform the club, FC N, 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.
6. The intervening party, Club Y, has to reimburse the amount of EUR 7,500 to the club, FC N, **within 30 days** as from the date of notification of this decision.
7. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% *per annum* will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for its consideration and a formal decision.
8. The club, FC N, is directed to inform the intervening party, Club Y, 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:

Markus Kattner
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Encl. CAS directives