

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 22 July 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Theo van Seggelen (Netherlands), member

Jon Newman (USA), member

Ivan E. Gazidis (England), member

Guillermo Saltos Guale (Ecuador), member

on the claim presented by the club

FC R,

as Claimant

against the club

W FC,

as Respondent

regarding a dispute for solidarity contribution in connection with
the transfer of the player D

I. Facts of the case

1. According to a confirmation of The S Football Association (SFF), the player D (hereinafter: *the player*), born on 16 April 1984, was registered for its member club, W FC (hereinafter: *the Claimant*), from 29 May 1998 until 2 July 2000 as an amateur player, and from 12 July 2000 until 30 June 2004 as a professional player.
2. In country S, the sporting season lasts as from 1 August until 31 July of the following year.
3. The W Football Association (WFA) confirmed that the player was registered with its affiliated club, W FC (hereinafter: *the Respondent*), on 24 July 2007, after "*International Clearance*" had been granted by The Football Association (hereinafter: *The FA*) on that date.
4. By means of a fax dated 10 July 2009, the Claimant submitted a claim to FIFA, requesting solidarity contribution due to it from the Respondent, in respect of the transfer of the player from the club, H FC (hereinafter: *H FC*), to the club, W FC (hereinafter: *the Respondent*) on 10 July 2007 for the alleged sum of 200,000.
5. In particular, the Claimant alleged that the solidarity contribution was due to it as a result of this international transfer between two clubs belonging to two Associations, i.e. The FA and The W Football Association, and had to be calculated as follows:

Alleged Total Compensation paid by the Respondent to H FC = 200,000.

Season of 14th birthday = $(0.25\% \times 200,000) \times 33/365 = 45.21$

Season of 15th birthday = $0.25\% \times 200,000 = 500$

Season of 16th birthday = $0.5\% \times 200,000 = 1,000$

Season of 17th birthday = $0.5\% \times 200,000 = 1,000$

Season of 18th birthday = $0.5\% \times 200,000 = 1,000$

Season of 19th birthday = $0.5\% \times 200,000 = 1,000$

Season of 20th birthday = $0.5\% \times 200,000 = 1,000$

6. Therefore, the Claimant requested the payment of a sum of 5,545.21 together with interest calculated on this outstanding sum at the appropriate rate.
7. By means of another fax dated 5 August 2009, the Claimant contacted FIFA again, and updated its claim reducing the amount requested.

8. In particular, the Claimant alleged that the solidarity contribution was due to it as a result of the aforementioned transfer and had to be calculated as follows:

Total Compensation paid by the Respondent to H FC = 200,000.

Season of 15th birthday = 0.25% x 200,000 = 500
Season of 16th birthday = 0.5% x 200,000 = 1,000
Season of 17th birthday = 0.5% x 200,000 = 1,000
Season of 18th birthday = 0.5% x 200,000 = 1,000
Season of 19th birthday = 0.5% x 200,000 = 1,000
Season of 20th birthday = 0.5% x 200,000 = 1,000

9. Therefore, the Claimant requested the payment of a total sum of 5,500 together with interest calculated on this outstanding sum at the appropriate rate.

10. By means of a fax dated 13 November 2009, the Respondent, whilst not contesting the facts exposed by the Claimant, rejected the claim for the following reasons:

- a. Although the Respondent (along with the other clubs, X FC and Y FC) is (are) regulated by The W Football Association, and that in terms of issues such as players' transfers and discipline, the Respondent is an affiliate of The W Football Association, it plays in competitions which fall under the jurisdiction of The Football Association (The FA).
- b. The Respondent came into being in 1912 and has participated in the Football League since then; the Respondent has played in all 4 divisions of the Football League (including a spell in the 1st Division [now the Premier League] and is currently competing in the Championship League; it is therefore "critical" that the Respondent is permitted by all governing bodies concerned to compete fairly and on equal financial and competitive terms with all other club in the Football League.

11. In this connection, the Respondent submitted that:

- a. The first point it made was that, as a participant club in the Football League, it – like all other clubs competing in the Football League – received a circular from The FA dated 19 January 2005 with an advice from them that solidarity payments were not payable on domestic transfers in any circumstances.
- b. In reliance with that advice, the Respondent acted upon it as a participant in the Football League. It has therefore entered into dealings on that basis and acted in good faith and in reliance upon that advice from The FA.

- c. Any other just interpretation of the Regulations would have given it cause to take the solidarity payment issue into account in negotiations for the acquisition, or disposal, of players in such circumstances. It has not done so and submitted that it would be unfair to it to do so after the event. Solidarity was not raised by any governing body before or at the time of the transfer in question.
 - d. It believed that the Claimant's attempt to distinguish this transfer from a domestic transfer on the basis of an argument that the transfer at the basis of the present dispute is "international" as opposed to "domestic" is flawed and immaterial.
12. Finally, the Respondent concluded its response with the following arguments:
- a. The really wide and important issue there was the effect of any decision which would make solidarity payments payable in the circumstances of clubs who would be materially disadvantaged.
 - b. The Respondent submitted that the true intention of the Regulations was not to discriminate between clubs and in its submission interpreting the Regulations to create such discrimination would be grossly unfair.
 - c. Clubs that are affiliated to one National Association and participate in a League that is affiliated to another National Association should be treated equally with their respective fellow member clubs within the League in which they participate. For example, if the player had been transferred from H FC to the club, B FC (instead of to the Respondent) and had then been transferred from B FC to another club, Z FC, no solidarity contribution would have been payable on either transfer. The Respondent participates in the same competitive league pyramid structure as B FC, and therefore must be treated as B FC's equal when it comes to triggering (or non-triggering) of a solidarity payment. To interpret the Regulations otherwise would distort competition between clubs competing against each other in the same national league structure.

- d. There are 92 clubs in the top 4 divisions of the Football League, 90 of them are affiliated to The FA and only 2 (including the Respondent) affiliated to the W Football Association. It would discriminate the 2 W Football Association affiliated clubs if a transfer of a player by one of the 90 to another of the 90 clubs (or between the 2 clubs affiliated to the W Football Association) did not trigger a solidarity payment but the transfer by one of the 90 (H FC) to one of the 2 clubs (the Respondent, *in casu*) were to trigger a solidarity payment.
 - e. The anomaly of a club affiliated to one National Association and participating in a League affiliated to another National Association is not unique (examples include D FC in the League of of country I and FC V participating within the boundaries of the V Football Association). UEFA and FIFA allow these clubs to participate in these Leagues for a variety of reasons. Therefore, as these governing bodies have sanctioned these historic anomalies, then all transfers between all the clubs in theses competitions must be viewed as "*non-solidarity transfers*" to protect the integrity of the competition.
13. The Respondent therefore asked that the claim for a solidarity payment in respect of this transfer is rejected.
14. By means of a fax dated 3 February 2010, the Claimant re-iterated its formal request for Solidarity Contribution from the Respondent in the sum of 5,500 plus interest at the prevailing rate, as determined by FIFA, underlining that the transfer at the basis of the dispute had occurred between two Associations and was, therefore, considered international.
15. By means of a fax of 29 June 2010, the Respondent replied that it did not accept the comments made in the letter of 2 June 2010, that it had in anyway made a request to Z FC, nor did it accept the arguments put forward in the letter of 3 February 2010 by the Claimant.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (DRC) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 10 July 2009, thus after 1 July 2008. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *the Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 1 and 2 of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. d) of the Regulations on the Status and Transfer of Players (edition 2009), the Dispute Resolution Chamber is competent to decide on the present litigation relating to solidarity contribution between clubs belonging to different associations.
3. Furthermore, taking into consideration that the player was registered with his new club on 24 July 2007, and considering that the present claim was lodged on 10 July 2009, the Chamber analysed which regulations 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 (editions 2009 and 2008), the previous version of the regulations (edition 2005; 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 that, as established in art. 21 in connection with annex 5 of the Regulations, if a professional moves during the course of a contract, the new club of the player shall distribute 5% of any compensation, with the exception of training compensation, paid to the player's former club 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 birthdays.

5. In continuation, the members of the Chamber noted that the Claimant first requested from the Respondent the payment of the total sum of 5,545.21, but then – shortly after – reduced its claim to the payment of the total sum of 5,500, corresponding to 2.75% of the total transfer compensation paid for the transfer of the player from the club, H FC, to the Respondent, together with interest calculated on the outstanding sums at the appropriate rate, as solidarity contribution for the seasons of the player's 15th until 20th birthdays, i.e. the sporting seasons 1998/1999, 1999/2000, 2000/2001, 2001/2002, 2002/2003 and 2003/2004.
6. On the other hand, the members of the Chamber noted that the Respondent objected to the Claimant's claim that a solidarity payment is due, since the Respondent plays in the same domestic pyramid as H FC, and that therefore this particular transfer was deemed to be domestic, as it was from one club to another being a member of the same league competition.
7. In this respect, the members of the Chamber emphasised that art. 21 and annex 5 of the Regulations have to be read under the light of art. 1, which lays down the scope of the Regulations and in particular to its par. 1 which establishes that the Regulations deal with the status and eligibility of players, as well as with the rules applicable whenever players move between clubs belonging to different associations.
8. In this regard, the Dispute Resolution Chamber highlighted the contents of art. 9 par. 1 *ab initio* of the Regulations, according to which players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association.
9. In this respect, the Chamber acknowledged the undisputed fact that H FC is a club affiliated to The Football Association (The FA) and that the Respondent is a club affiliated to The W Football Association (WFA). The Chamber was eager to emphasise that the Respondent itself had asserted that it was an affiliate of The W Football Association especially when it concerns players' transfers. Therefore, notwithstanding the fact that H FC and the Respondent played in the same domestic pyramid, and even in the same competition – i.e. the Football League Championship – during the season 2007/08, the transfer of the player from H FC to the Respondent is undoubtedly a transfer between clubs belonging to different associations, also commonly called "international transfer".
10. For the sake of completeness, the members of the Chamber highlighted that The W Football Association confirmed that the player had been registered with the Respondent on 24 July 2007, once the "*International Clearance*" had been granted

by The FA on that date (emphasis added). Thus, the Chamber underlined the fact that the Respondent, although playing in a League affiliated to The FA, remains a member club of The W Football Association exclusively, which generates mandatorily an international transfer in case a player is transferred from a club affiliated to The FA to a club affiliated to The W Football Association, reason for which the player in question was registered at the said The W Football Association.

11. Having rejected the Respondent's objection, the Chamber considered that the solidarity contribution was due to the Claimant on the basis of the international transfer of the player from H FC to the Respondent, i.e. between clubs belonging to different associations.
12. In continuation, the Chamber established that whenever a player moves during the course of a contract and transfer compensation is paid to his former club, solidarity contribution shall undoubtedly be due, and the calculation of this solidarity contribution shall be established *in casu* in accordance with annex 5 of the Regulations.
13. In view of the aforementioned, the Chamber proceeded to the rightful calculation of the solidarity contribution due to the Claimant by the Respondent. In this respect, it recalled the provisions of art. 1 of annex 5 of the Regulations, which stipulates that the amount payable as solidarity contribution is calculated on a *pro rata* basis according to the period of training that the player spent with each club. Furthermore, the Chamber underlined that the amount due for each season is listed in a table mentioned under the aforesaid provision.
14. In continuation, the Dispute Resolution Chamber duly noted that the Claimant is requesting solidarity contribution for the training and education of the player for the seasons 1998/99 until 2003/04, i.e. during six seasons, which correspond to the seasons of the player's 15th to his 20th birthday – as confirmed by The S Football Federation (SFF) – in an amount of 5,500, as well as the payment of interests from the due date of payment.

15. As a result, referring to the provision mentioned in point. II. 12 above, and taking into account that the transfer compensation paid by the Respondent to H FC of 200,000 had not been contested by the Respondent, the Chamber ruled that the Claimant is entitled to receive, for the season of the player's 15th birthday, 5% of the 5% of the relevant transfer compensation, and for each season of the player's 16th to his 20th birthday (five seasons in total), 10% of the 5% of the relevant transfer compensation. Thus, in total, for the six seasons during which the player was registered with the Claimant, which correspond to the seasons of player's 15th to his 20th birthday, the Claimant is entitled to receive 55% of 5% of the relevant transfer compensation, i.e. the amount of 5,500, as solidarity contribution.
16. Furthermore, with regard to the Claimant's claim for interests, the Chamber established that, in view of the circumstances of the present case, and in line with its constant practice, an interest rate of 5% interest *per annum* on the aforementioned compensation shall be applicable in the matter at hand.
17. Therefore, the Chamber held that the Respondent must pay the Claimant, in addition to the solidarity contribution in the amount of 5,500, plus 5% interest *per annum* on the said amount as from 24 August 2007, which corresponds to the due date of the relevant payment of solidarity contribution.
18. In view of all of the above, the Chamber decided that the claim of the Claimant, FC R, is accepted.
19. In continuation, the deciding authority 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 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.
20. In this respect, the Chamber 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.
21. 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.
22. The amount in dispute to be taken into consideration in the present proceedings amounts to 5,500 related to the claim of the Claimant. Therefore, the Chamber concluded that the maximum amount of costs of the proceedings corresponds to CHF 5,000 (cf. table in Annexe A).

23. Considering that the case at hand allowed to be dealt with following a reasonable procedure, that the case was adjudicated by the Chamber, that the present case did not show particular factual difficulty and that it did not involve specific legal complexity, the Chamber determined the final amount of costs of the current proceedings to the amount of CHF 4,000.
24. In view of all of the above, the Chamber concluded that the amount of CHF 4,000 has to be paid by the Respondent to FIFA to cover the costs of the present proceedings.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, FC R, is accepted.
2. The Respondent, W Football Club, has to pay to the Claimant, FC R, the amount of 5,500 plus 5% interest *per annum* as of 23 August 2007, **within 30 days** as from the date of the 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 4,000 are to be paid by the Respondent, W Football Club, **within 30 days** as of notification of the present decision to the following bank account with the reference to case nr. XX:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80AW FC

5. The Claimant, FC R, is directed to inform the Respondent, W Football Club, 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