

# **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 31 October 2008,

in the following composition:

**Slim Aloulou** (Tunisia), Chairman

**Theo van Seggelen** (the Netherlands), member

**Rinaldo Martorelli** (Brazil), member

**Sofoklis Pilavios** (Greece), member

**Essa M. Saleh Al-Housani** (United Arab Emirates), member

on the claim presented by the club,

**K,**

as "*Claimant*"

against the club,

**FC M,**

as "*Respondent*"

regarding a training compensation dispute related to the  
transfer of the player A.

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

1. The H Football Federation confirmed that the player A, born on 12 July 1988, was registered as an amateur with its member club, K (hereinafter: K), as from 1 July 2003 until 30 June 2006 (player passport). Moreover, the said Federation confirmed that its football season runs from 1 July until 30 June the following year and that the club is a club belonging to category 2 as regards the calculation of training compensation.
2. On 22 August 2006, the H Football Federation issued the International Transfer Certificate (ITC) for the player A to the M Football Association. According to the information received from the M Football Association, the player A was registered as a Professional with its member club, P FC, on 24 August 2006 (player passport). Furthermore, the said Association confirmed that the player was released by its member club on 31 August 2006 and the ITC of the player was sent to the I Football Federation on the same date. According to the M Football Association, the player A, during his registration with its club, P FC, did not take part in any competitive match. On file is also a confirmation from the M Football Association that its member club concerned belongs to category 3 and that its football season runs from 1 July until 30 June the following year.
3. The M Football Association submitted a copy of the employment contract signed between its member club, P FC, and the player in question. The relevant contract was concluded on 24 August 2006 and was to be valid until 30 June 2007. Furthermore, according to the contract, the player was engaged as a professional player and was entitled to receive a monthly salary of 250.
4. On 28 November and 14 December 2006 respectively, the club K via the H Football Federation contacted FIFA and requested the payment of training compensation in the amount of EUR 273,452 including late payment interest as from September 2006 from the I club, FC M (hereinafter: M), in accordance with the relevant applicable FIFA Regulations. M belongs to category 1.
5. K explained that in July 2006 it held several negotiations with M in relation to the proposed transfer of the player in question from K to M. During those discussions the parties apparently exchanged various draft transfer / loan contracts but then failed to reach an agreement because M changed their position in the last phase of the negotiations. What is more, K alleged that M's representative mentioned that should K fail to agree to the terms proposed by M they would seek to arrange the players' transfer to M through a certain M club.

6. According to K, the contract which the player A signed with the M club is null and void because it did not reflect but rather disguised the parties' real intentions. It was actually only made in a way that K does not receive training compensation corresponding to the category of M but only the compensation based on the category of the M club. K requests that the training compensation shall be paid directly by M in accordance with the relevant applicable FIFA Regulations and, in view of the invalidity of the transfer of the player to the M club, the amount of the compensation should be based on M's category.
7. M rejected the claim of K as unfounded and with the sole purpose to claim the invalidity of the transfer agreement between K and P FC in order to claim a better compensation for the training of the player. According to M, it entered into negotiations with the M club which led to the signing of a transfer agreement between the two clubs.
8. K replied that it remains convinced that M has been acting in bad faith and the representations they made in their submission are simply false. In particular, K maintains that it never concluded a contract with the M club, P FC.
9. M finally emphasized that contrary to what K argues, the player A was an amateur player when he moved from K to the M club. Therefore, it is patent and clear that there was no breach of contract when the player left K since he was not bound by any employment contract. M therefore concludes that the player was free to sign a contract with any club he intended to register with.
10. M added that the player was transferred from the M club after ordinary negotiations were held which eventually led to the signing of a transfer contract between the two clubs (transfer agreement dated 25 August 2006 on file). For the said transfer of the player, M paid an amount of EUR 90,000.
11. Further, M as a subsidiary position, mentioned that no evidence was presented that K offered the player an employment contract in accordance with art. 6 par. 3 of the Annex 4 of the FIFA Regulations for the Status and Transfer of Players. As a consequence, K did not offer the player a contract and is thus not entitled to receive training compensation.
12. On the other hand and in case the Dispute Resolution Chamber should be of the opinion that M must pay training compensation to K, M submits that the calculation of K is not correct since it did not take into account that the seasons between the players' 12th and 15th birthday shall be based on the training and education costs for category 4. Likewise, the calculation, if at all, should be based on the average of the training costs of the two clubs since the player would have moved from a lower to a higher category within the territory of the EU/EEA.

13. After having been asked by FIFA to provide certain additional information/documentation, K maintained that in the summer 2006 it offered the player a professional contract. In that period, they held a series of negotiations with the player and his father.

## **II. Considerations of the Dispute Resolution Chamber**

1. First of all, the Chamber analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 28 November 2006, as a consequence the Chamber concluded that 2005 edition of the Rules Governing Procedures on matters pending before the decision making bodies of FIFA are applicable to the matter at hand.
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 and art. 22 lit. (d) of the Regulations on the Status and Transfer of Players (edition 2008) the Dispute Resolution Chamber is competent to decide on the present litigation with an international dimension concerning the training compensation claimed by the Claimant for the training and education of the player A.
3. Furthermore, and taking into consideration that the player was registered with his new club in August 2006, 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 (edition 2008), and considering that the present claim was lodged on 28 November 2006, 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 the above-mentioned facts of the case as well as all the documentation contained in the file. In particular, the Chamber acknowledged that the Claimant requested training compensation from the Respondent amounting to EUR 273,452 including late payment interest based on the number of years the player in question spent training with the Claimant. Particularly, the Claimant emphasized that irrespective from the fact that the player in question had already previously been registered as a professional with the club in M, it is entitled to receive the claimed training compensation from the

Respondent, since the player's previous registration with the club in M was aimed to circumvent the Respondent's obligation to pay training compensation.

5. On the other hand, the deciding authority noted that the Respondent mainly invoked that the Claimant is not entitled to received any training compensation *inter alia* stressing that the Claimant did not offer the player a contract of at least an equivalent value to his existing one within the deadline of 60 days as provided for by art. 6 par. 3 of Annex 4 of the Regulations. Moreover, the Respondent stressed that it held ordinary transfer negotiations with the club in M for the transfer of the player which finally led to the signing of the transfer agreement between the two clubs.
6. Taking into account the above, the Chamber at first started by taking note that the Claimant maintains having offered the player A a new contract.
7. In continuation, and taking into account that the 2005 edition of the Regulations is applicable on the matter at stake, the members of the Chamber referred to art. 6 of Annex 4 of the said Regulations, which contains special provisions regarding players moving from one Association to another inside the territory of the EU/EEA. According to par. 3 of the mentioned provision, training compensation is only payable if the former club does offer the player a contract of at least an equivalent value to the current contract in writing via registered mail at least 60 days before the expiry of his current contract, or if it can justify that it is entitled to training compensation.
8. At this point, the Chamber underlined that, considering the divergent statements of the Claimant and the Respondent, one of the core issue between the parties to the present dispute is therefore whether the Claimant has satisfied the formal criteria of art. 6 par. 3 of Annex 4 of the Regulations in order to be entitled to training compensation.
9. However, in this context, the Chamber deemed it appropriate to emphasize that due to the often experienced difficulties by the relevant clubs concerned to demonstrate that they indeed had proceeded to offer a player a new contract under the previous edition 2001 of the Regulations, when revising the Regulations it was decided to integrate in the 2005 edition of the Regulations some formal preconditions in order to facilitate the evidence that a contract offer was effectively made. In particular, the Chamber emphasized that the implemented new preconditions are not formal requirements *stricto sensu* but a requirement to evidence the fact of having made such an offer to a particular player. This should, therefore, ease the burden of proof laying on training clubs. This is the actual aim of the relevant formalities.

10. In this respect, the members of the Chamber noted, however, that the Claimant did not submit any documentary evidence in order to corroborate its allegations in this respect.
11. In view of the above, the Chamber emphasized that in accordance with the legal principle of the burden of proof, which is a basic principle in every legal system, a party deriving a right from an asserted fact has the obligation to prove the relevant fact (cf. art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC). Therefore, due to the lack of proof with regard the Claimant's allegations of having made an offer for a new employment contract, the Dispute Resolution Chamber decided that it cannot back the Claimant's position.
12. Taking into account the above, the Chamber reached the conclusion that the Claimant by failing to produce evidence of having met the requirements in accordance with art. 6 par. 3 of Annex 4 of the Regulations is not entitled to claim training compensation from the Respondent.
13. Subsequently, the members of the Chamber took note of the Claimant's allegation that the player's registration with the club in M was made only in order to circumvent its entitlement to receive training compensation from the Respondent.
14. In view of the above, the members of the Chamber referred to the documents and information contained in the file which show that the player A was transferred from the H Football Federation to the M Football Association in August 2006 and that, based on the employment contract the player signed with P FC on 24 August 2006 and valid until 30 June 2007, his International Transfer Certificate was issued by the H Football Federation in favour of the M Football Association on 22 August 2006. Thereupon, on 24 August 2006, the player was, according to the confirmation received from the M Football Association, duly registered at that association for its aforementioned member club. The documents on file also show that after one week of his registration with the M Football Association only, i.e. on 31 August 2006, the player's International Transfer Certificate was issued to the I Football Federation.
15. In view of the above, the Chamber held that, as a general rule, the applicable Regulations do not prevent such transfers as the one at the basis of the present dispute. In particular, the Chamber held that as long as the relevant provisions of the Regulations relating to the registration periods (art. 6 of the Regulations), minimum length of a contract (art. 18 par. 2 of the Regulations) and the maximum amount of registrations during one season (art. 5 of the Regulations) are fully respected, the transfer of a player only one week after having been registered for

his previous club cannot *per se* be considered as invalid or being against the pertinent regulations.

16. Yet, the Chamber deemed it important to emphasize that should it become aware of any blatant circumvention of the regulations or that a party makes abuse of its legal rights, such stance would be severely punished.
17. Without, however, going into further analysis of the circumstance surrounding the player's move from H to M and subsequently to I, the deciding body reiterated that, as established above, the Claimant did not provide documentary evidence for having offered the player an employment contract at all.
18. In view of all of the above, the Dispute Resolution Chamber decided that the claim of the Claimant is rejected.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, club K, is rejected.

\*\*\*\*\*

#### **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](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber:

---

Markus Kattner  
Deputy Secretary General

Encl. CAS directives