

Decision of the Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 24 November 2010,

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

on the claim presented by the club

N,

as Claimant

against the club

P,

as Respondent

regarding a training compensation dispute
related to the transfer of the player C

I. Facts of the case

1. The Football Federation N (hereinafter: *FFN*) confirmed that the player, C (hereinafter: *the player*), born on 1 June 1988, was registered with its affiliated club N (hereinafter: *the Claimant*) as from 11 April 2001 until 27 June 2005 as an amateur.
2. According to the player's passport issued by the Football Federation N, there is "*no record found*" for the period as from 28 June 2005 until 7 August 2007.
3. The football season in the country N follows the calendar year.
4. The Football Federation P (hereinafter: *FFP*) confirmed that the player was registered with its affiliated club P (hereinafter: *the Respondent*) on 9 August 2007 as a professional.
5. The Football Federation P confirmed that the Respondent belonged to the category III (indicative amount of EUR 30,000 per year within UEFA) during the season 2007/2008 when the player was registered with said club.
6. On 2 February 2009, the Claimant contacted FIFA asking for its proportion of training compensation from the Respondent. In particular, the Claimant is requesting EUR 72,500 plus 5% interest *p.a.* to be applied on this amount as from the due date of payment, as well as the reimbursement of the incurred proceedings costs.
7. In its reply, the Respondent stated that the player didn't play football when he was 17 and 18 years old, which is, in the Respondent's opinion, a very important period in a player's career. In this respect, the Respondent pointed out that training compensation was created to reward clubs who trained and educated players and that the player hadn't really terminated his training period when he joined the Respondent.
8. Furthermore, the Respondent held that the Claimant did not show any interest about the future of the player and underlined that every link was cut between the Claimant and the player. The Respondent therefore considered itself as the club who trained the player. However, because the player didn't show the quality expected, the Respondent and the player terminated the contractual relation by mutual agreement on 9 May 2008.
9. The Respondent also referred to art. 5 par. 4 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players and considered as obvious that the amount claimed by the Claimant is "*tremendously high*". In this respect, the Respondent compared its own costs for training of players on the basis of the age of the player when he was playing for the Claimant, and pointed out that such costs were not superior than EUR 500 per year per player.

10. Additionally, the Respondent asserted that the player actually didn't play during six months pertaining to the season of his 17th birthday, but was only registered with the Claimant over said period of time.
11. Finally, the Respondent underlined that there was no transfer of the player from the Claimant to the Respondent, but that the player was unemployed when he joined the Respondent and thus was a free agent.
12. Considering all those arguments, the Respondent concluded that no training compensation is due to the Claimant or, in a subsidiary way, that the maximum amount due is EUR 2,500 or, in a second subsidiary way, that the maximum amount due is EUR 37,500.

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, the judge first referred to art. 21 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *the Rules*) and noted that the present matter was submitted to FIFA on 2 February 2009, thus after the aforementioned Rules entered into force on 1 July 2008. Therefore, the DRC judge concluded that the 2008 edition of the Rules is applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the Rules; edition 2008).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and 3 of the Rules and confirmed that in accordance with art. 24 par. 1 and 2 lit. ii) in combination with art. 22 lit. d) of the Regulations on the Status and Transfer of Players (editions 2008 and 2009) he is competent to decide on the present litigation concerning the training compensation between clubs belonging to different associations.
3. Furthermore, the DRC judge 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 DRC judge referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2008 and 2009) and, on the other hand, to the fact that the player was registered for the Respondent on 9 August 2007 as a professional football player. In view of the aforementioned, the DRC judge concluded that 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.
4. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging the facts of the case as well as the documentation contained in the file.

5. In continuation, the DRC judge duly noted that, on the one hand, the Claimant is requesting, *inter alia*, the payment of training compensation from the Respondent for the training and education of the player in the amount of EUR 72,500 plus 5% interest *p.a.* to be applied on this amount, and that, on the other hand, the Respondent contested the Claimant's entitlement to receive any payment corresponding to training compensation.
6. In this regard, the DRC judge firstly took due note that the Respondent, in order to justify its position, asserted that the player didn't play football when he was 17 and 18 years, which is, according to the Respondent, a very important period of time in football player's career. What is more, the Respondent also held that the player had not completed his training when he was firstly registered as a professional football player with the Respondent on 9 August 2007.
7. Furthermore, the DRC judge also noted that the Respondent considered itself as the club who trained the player and that, on the contrary, the Claimant would have allegedly not believed in the future of the player and thus broke every link between itself and the player.
8. In view of the Respondent's assertion, the DRC judge emphasized that with regard to the payment of training compensation, as established in art. 20 of the Regulations in combination with the contents of art. 2 par. 1 of Annexe 4 of the Regulations, the relevant fact to be taken into account is either the first registration of the player as a professional, or the transfer of a professional between clubs of two different associations, whether during or at the end of his contract, both before the end of the season of his 23rd birthday.
9. In view of the above, the DRC judge recalled that based on the documents at his disposal, the player, who was born on 1 June 1988, was registered for the Claimant as an amateur as from 11 April 2001 until 27 June 2005, i.e. the seasons comprehended between the player's 13rd and 17th birthday, and that the N football seasons ran, during said period of time, as from January until December. Furthermore, the DRC judge also duly noted that according to the player's passport, the player had not been registered with any football club as from 28 June 2005 until 7 August 2007.
10. In light of the above-mentioned considerations, and pursuant to his long standing jurisprudence, the DRC judge came to the conclusions that none of the aforementioned arguments brought forward by the Respondent to challenge the Claimant's right to claim training compensation were valid elements to refuse the entitlement of training compensation for the training and education of the player by the Claimant.

11. On account of the above, such arguments brought forward by the Respondent were rejected by the DRC judge.
12. Additionally, the DRC judge also took note that according to the Respondent, the player did not actually play during six months pertaining to the season of his 17th birthday *“but was only registered with the Claimant over said period of time”*.
13. In view of the above, the DRC judge referred to art. 12 par. 3 of the Rules which establishes that any party deriving a right on the basis of an alleged fact shall carry the burden of proof. In this respect, the DRC judge noted that the Respondent did not provide any evidence of the aforementioned allegation and consequently failed to prove such assertion. As a result thereof, the Respondent’s contention based on the alleged absence of effective training of the player over said period of time was rejected.
14. Finally, the DRC judge turned his attention to the Respondent’s argument in accordance with which no training compensation is payable to the Claimant as there has not been any transfer since the player was free and unemployed when he was registered with the Respondent.
15. In this respect, the DRC judge reverted to the documentation at his disposal and could verify that the last known club with whom the player was registered is the club N, i.e. the Claimant (cf. point I./ 1. above), with whom he was registered as an amateur as from 11 April 2001 until 27 June 2005.
16. The DRC judge could also verify that the player does not appear to have been registered with any club as of 28 June 2005 until 7 August 2007 (cf. point I. 2. above), which consists in the entire period of time comprehended after his registration with the Claimant and before his registration on 9 August 2007 as a professional football player with the Respondent (cf. point I./ 4. above).
17. In light of the above, the DRC judge concluded that the player was registered as a professional for the first time on 9 August 2007 with the Respondent, which confirmed the application on the situation at hand of the provisions set out in art. 20 of the Regulations and art. 2 lit. 1 (i) and art. 3 lit. 1 of Annexe 4 of the Regulations.
18. Additionally, the DRC judge wanted to underline that, as a general rule, training compensation is due by the new club, irrespective of whether there has been paid a transfer amount for the transfer of a player, and is based on the category of the new club.

19. In light of the above, the DRC judge decided that the Respondent is liable to pay training compensation to the Claimant.
20. Turning his attention to the calculation of the amount to be paid as training compensation for the player of the reference by the Respondent to the Claimant, the DRC judge noted that the Respondent had claimed, in case it was found that the training compensation payment was due to the Claimant, that the maximum amount payable to the Claimant was EUR 2,500 or, as a subsidiary request, that the maximum amount due to the Claimant was EUR 37,500.
21. In this respect, the DRC judge reverted to the Respondent's statement in accordance with which it considered that the amount claimed by the Claimant was "*tremendously high*" and that, in its opinion, the costs of training of players like the player of the reference were not superior than EUR 500 per year per player (cf. point 1./ 8. above).
22. In this regard, the DRC Judge recalled that, in accordance with the contents of art. 5 par. 4 of Annexe 4 of the Regulations, the DRC judge may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review. However, the DRC judge was eager to emphasize that such possibility allowed by the Regulations would, in any case, have to be analysed on a case-by-case basis.
23. In this context, the DRC judge pointed out that, according to art. 20 of the Regulations and art. 2 of Annexe 4 of the same Regulations, the player's first registration as a professional is, in itself, sufficient to trigger the right of training clubs to claim training compensation. Moreover, as pointed out by the Court of Arbitration for Sport (CAS) in the case *CAS XXXX/X/XXXX K v/ T & Football Federation X*, as well as by the well-established jurisprudence, the Regulations do not set out any minimum length of the contractual relationship between the player and the club where he signs his first professional contract when considering the amount of training compensation due in a particular case.
24. In the matter at hand, the DRC judge considered that no particular fact of the case should lead him to review the amount payable in the sense of a reduction compared to the strict application of the provisions regarding the calculation of training compensation.
25. Consequently, the DRC judge concluded that the provisions of art. 5 par. 4 of Annexe 4 of the Regulations shall not be applied in the present case and, therefore, decided that the amount of training compensation payable by the Respondent to the Claimant shall not be reviewed.

26. In continuation, after having fully established the Claimant's entitlement to training compensation, the DRC judge proceeded to the calculation of the relevant amount of training compensation to be paid by the Respondent to the Claimant. In this respect, he acknowledged the fact that the player in question was born on 1 June 1988 and had been registered with the Claimant as from 11 April 2001 until 27 June 2005. Furthermore, it recalled that the country N football season ran, during the relevant period of time, as from January to December.
27. As a result, and considering art. 3 par. 1 of Annexe 4 of the Regulations, which stipulates that the amount payable is calculated on a *pro rata* basis according to the period of training that the player spent with each club, the DRC judge concluded that the effective period of time to be considered in the matter at stake corresponds to the total period of 51 months comprehended between 11 April 2001 until 27 June 2005, i.e. nine months of the season 2001, the entire seasons 2002 until 2004 and six months of the season 2005, which corresponds to the seasons of the player's 13th to and including the season of his 17th birthday.
28. Turning its attention to the calculation of training compensation, the DRC judge deemed fundamental to recall the specific provisions of art. 5 par. 3 of Annexe 4 of the Regulations, according to which, *"To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs"*.
29. In view of the above, the DRC judge ruled that the training costs for the seasons 2001 until 2003, i.e. the seasons of the player's 13th until 15th birthdays, were to be based on the training and education costs of a category IV club.
30. In this respect, the DRC judge recalled that according to FIFA circular letter no. 959 dated 16 March 2005, the indicative amount per season for a category IV club within the Union des Associations Européennes de Football (UEFA) was of EUR 10,000.
31. In continuation, and turning its attention to the seasons 2004 until 2005, the DRC judge referred to art. 5 par. 1 and 2 of Annexe 4 of the Regulations, which stipulates that as a general rule, it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself. Therefore, the compensation to be paid is to be calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

32. The DRC judge acknowledged that the FFP confirmed that the Respondent was a category III club at the time when the player was registered as a professional, i.e. on 9 August 2007. Consequently, the DRC judge took into account that the indicative training costs for a category III club and member of a national association affiliated to the UEFA amount to EUR 30,000.
33. Equally, the DRC judge emphasized that according to art. 3 par. 2 of Annexe 4 of the Regulations, the deadline for payment of training compensation is 30 days following the registration of the professional with the new association.
34. In view of the applicable provisions and of the facts of the present case, and having proceeded to the relevant calculation in view of the dates of registration of the player with the Claimant, the DRC judge came to the conclusion that the Claimant is entitled to receive training compensation from the Respondent in the amount of EUR 72,500 plus 5% interest per year to be applied on said amount as from 9 September 2007 until the effective date of payment.
35. Thus, in view of all of the above, the DRC judge decided that the claim of the Claimant, with regard to the amount of training compensation to be paid by the Respondent, is accepted.
36. In continuation, the DRC judge referred to art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Dispute Resolution Chamber relating to disputes regarding training compensation 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.
37. In this respect, the DRC judge 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.
38. 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.
39. The amount in dispute to be taken into consideration in the present proceedings amounts to EUR 72,500 related to the claim of the Claimant. Therefore, the DRC judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 10,000 (cf. table in Annexe A).
40. Considering that the case at hand did not allow to be dealt with following a reasonable procedure and that it did involve specific legal complexity, the DRC judge determined the final amount of costs of the current proceedings to the amount of CHF 10,000.

41. In this respect, the DRC judge took into account that the Claimant had paid the advance of costs in the amount of CHF 3,000 in accordance with art. 17 of the Procedural Rules.
42. In view of all of the above, the DRC judge concluded that the amount of CHF 10,000 has to be paid by the Respondent to cover the costs of the present proceedings. Thereof the amount of CHF 7,000 has to be paid by the Respondent to FIFA and the amount of CHF 3,000 to the Claimant.

III. Decision of the DRC judge

1. The claim of the Claimant, N, is accepted.
2. The Respondent, club P, has to pay to the Claimant, club N, the amount of EUR 72,500 as well as 5% interest per year on the said amount as from 9 September 2007 until the date of effective payment, **within 30 days** as from the date of notification of this decision.
3. If the aforementioned sum plus interest 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 10,000 are to be paid by the Respondent, club P, **within 30 days** of notification of the present decision as follows:
 - 4.1 The amount of CHF 7,000 to FIFA to the following bank account with reference to case no. [XX-XXXXX]:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A
 - 4.2 The amount of CHF 3,000 to the Claimant, club N.
5. The Claimant, club N, is directed to inform the Respondent, club P, 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 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 DRC judge

Jérôme Valcke
Secretary General

Enclosed: CAS directives