

# **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 7 April 2011,

in the following composition:

**Geoff Thompson** (England), Chairman ad interim (did not take part in the deliberations)

**Michele Colucci** (Italy), member

**Jon Newman** (USA), member

**Mario Gallavotti** (Italy), member

**Todd Durbin** (USA), member

on the claim presented by the club,

**A,**

*as Claimant*

against the club,

**M,**

*as Respondent*

regarding training compensation in connection with the player F

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

1. According to the player passport issued by the Federation I (FI) the player, F (hereinafter: the player), born on 22 August 1993, was registered with the club, A (hereinafter: the Claimant), as from 25 July 2003 until 1 July 2007 as an amateur and with the club, C, as from 10 September 2007 until 1 October 2009, equally as an amateur. Furthermore, the said player passport indicated that the player was registered in the country E on 2 October 2009.
2. The football season in country I starts on 1 July and ends on 30 June of the following year.
3. The Federation I confirmed that the Claimant belonged to club category IV during the time the player was registered with it.
4. The Football Association E (FAE) confirmed that the player was registered as a scholar with its affiliated club, M (hereinafter: the Respondent), on 29 September 2009 and that the player held the professional status.
5. The Football Association E also confirmed that the Respondent belonged to club category I at the time the player was registered with it.
6. In addition, the Federation I submitted the relevant International Transfer Certificate (ITC) of the player, dated 2 October 2009, as well as the pertinent ITC request of Football Association E, dated 27 August 2009.
7. On 14 October 2009, the Claimant lodged a claim in front of FIFA claiming training compensation from the Respondent, arguing that the player was registered with the Respondent for the first time as a professional. In particular, the Claimant claimed the amount of EUR 100,000 plus 5% interest.
8. In this context, the Claimant asserted that the 2009 FIFA Regulations on the Status and Transfer of Players (hereinafter: the 2009 Regulations) are applicable to the case at hand, since the 2009 Regulations came into force on 1 October 2009 and the player was registered with the Respondent on 2 October 2009.
9. In its response, the Respondent recognized that training compensation was due, however, it argued that merely EUR 20,000 is due since, in accordance with art. 26 of the 2009 Regulations, the 2008 FIFA Regulations on the Status and Transfer of Players (hereinafter: 2008 Regulations) are applicable to the case at hand.

10. The Respondent asserted that the present matter should be assessed according to the Regulations that were in force at the date on which the Respondent and the player entered into the scholarship agreement. Therefore, the Respondent emphasized that it entered into a scholarship agreement with the player before the 2009 Regulations came into force, notably on 22 August 2009 and, hence, the 2008 Regulations are applicable as to the substance of the present matter.
11. Furthermore, the Respondent indicated that Football Association E requested the ITC before 1 October 2009, but the Federation I delayed the release of the ITC without any valid reasons, which, consequently, delayed the player's registration with the Respondent. In the Respondent's opinion, this circumstance could not benefit the Claimant.
12. In conclusion, the Respondent stated that the present case must be assessed according to the 2008 Regulations and the amount payable as training compensation should be calculated in accordance with the 2008 Regulations.
13. After having been invited by FIFA to submit its comments pertaining to art. 6 par. 3 of the Annexe 4 of the Regulations, the Claimant stated that it never offered the player a contract since the Claimant always participated in amateur championships. The Claimant also referred to the last sentence of the aforementioned article which stipulates that *"this provision is without prejudice to the right to training compensation of the player's previous club(s)"*.
14. Furthermore and in reply to the statements of the Respondent, the Claimant asserted that training compensation disputes should be assessed according to the Regulations in force when the disputed facts arose, in the present matter being the registration of the player with Football Association E on 2 October 2009. The Claimant argued that the aforesaid is supported by art. 20 in conjunction with art. 3 par. 2 of Annexe 4 of both the 2008 and 2009 Regulations which, *inter alia*, state the following: *"(...) the obligation to pay training compensation arises whether the transfer take place during or at the end of the player's contract (...)"* and *"(...) the deadline for payment of training compensation is 30 days following the registration of the professional with the new association (...)"*.
15. In its duplica, the Respondent amended its initial response and now rejected the Claimant's claim for training compensation in its entirety.
16. Firstly, the Respondent requested the Claimant to prove that it is in fact a purely amateur club and therefore in no position to offer its players professional contracts. In this regard, the Respondent referred to a decision passed by the Court of Arbitration for Sport (CAS) in CAS 2006/X/XXXX V v/ C and argued that the only

relevant criteria in order to determine whether or not a player is a professional is the remuneration he receives.

17. Secondly, the Respondent stressed that the Claimant erroneously relied on the player passport issued by the Federation I, which stipulated that the player was registered with Football Association E on 2 October 2009. The Respondent argued that the player was registered with it already on 29 September 2009. In this respect, the Respondent submitted an extract from Football Associations E's registration system and an e-mail from the Premier League to adduce that the registration date of the player was indeed 29 September 2009.
18. Furthermore, the Respondent stated that training compensation is indeed ordinarily due when a player is registered for the first time as a professional, however, in those cases in which the transitional measures apply, the relevant date for determining which version of the Regulations is applicable is either the date the contract at the centre of the dispute was signed or when the disputed facts arose. The Respondent then reiterated that, *in casu*, there are no disputed facts and, thus, the relevant date to consider is unquestionably the date on which the contract at the centre of the dispute was signed, which, according to the Respondent, had been confirmed in CAS 2007/X/XXXX-XXXX R v. S: *"The dispute at stake involves contracts signed before 1 July 2005 and the payment of training compensation for a period running from 1995 through 2004. In the view of the above quoted provision [art. 26] and of the FIFA Circular Letter No 995 dated 23 September 2005, the previous Regulations for the Status and Transfer of Player (edition 2001) (the "FIFA Regulations") shall govern the decision of this dispute"*.
19. Finally, the Respondent referred to point 6 of article 26 of The Commentary on The Regulations on the Status and Transfer of Players and emphasized that, to ensure uniformity, equality and certainty, the 2008 Regulations should apply to the matter at hand; the Respondent signed a contract with the player in August 2009 in the knowledge of what its maximum training compensation liability would be towards the player's training clubs. Therefore, it would be unjust and against the spirit of the Regulations if a revised version of the Regulations were to apply which had the effect of significantly increasing the Respondent's training compensation liability.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as Chamber) 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 14 October 2009. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008 (hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 21 par. 2 and 3 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 and art. 22 lit. (d) of the Regulations on the Status and Transfer of Players (edition 2010) the Dispute Resolution Chamber is competent to decide on the present litigation with an international dimension concerning the training compensation claimed from the Respondent by the Claimant for the training and education of the player.
3. Then, the Chamber continued to analyse which regulations should be applicable as to the substance of the matter, this being a fundamental issue in the case at hand. In doing so, the Chamber started by acknowledging the aforementioned facts of the case as well as the documentation on file.
4. In this regard, the Chamber took due note that, on the one hand, the Claimant argued that the player was registered with the Respondent on 2 October 2009 and that therefore the 2009 Regulations should be applicable to the case at hand, since the 2009 Regulations came into force on 1 October 2009. Furthermore, it took note that the Claimant argued that the pertinent ITC was sent by the Federation I to Football Association E on 2 October 2009. On the other hand, the Chamber noted as well that the Respondent argued that the 2008 Regulations should be applicable, since the player had signed a scholarship agreement with the Respondent on 22 August 2009 and was registered as a professional by Football Association E on 29 September 2009.
5. In analysing which edition of the regulations should be applicable as to the substance, the Chamber first acknowledged that in accordance with art. 29 par. 2 of the 2009 edition of the Regulations on the Status and Transfer of Players (hereinafter: 2009 Regulations), the 2009 Regulation came into force on 1 October 2009.
6. In continuation, the Chamber referred to art. 26 par. 1 of the 2009 Regulations which stipulates that *"any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations"* Likewise, the Chamber referred to art. 26 par. 2 of the 2009 Regulations, which stipulates that *"as a general rule, all other cases shall be assessed according to these*

*regulations with the exception of the following: a) Disputes regarding training compensation; b) Disputes regarding the solidarity contribution, c) Labour disputes relating to contracts signed before 1 September 2001. Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose”.*

7. The Chamber emphasized that, thus, cases regarding training compensation which were brought to FIFA on or after 1 October 2009, like the present one, are assessed according to the Regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose.
8. In this context, the Chamber recalled that, in accordance with art. 2 par. 1 of Annexe 4 of the Regulations on the Status and Transfer of Players (editions 2008, 2009, 2010), training compensation is due when the player is registered for the first time as a professional, or if a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23<sup>rd</sup> birthday. Therefore, in the present matter, the dispute must be assessed according to the regulations that were in force when the player was registered as a professional for the first time.
9. In view of the aforesaid, the Chamber had thus to analyse on which date the player was registered for the first time as a professional and noted that there appeared to be a discrepancy between the registration dates of the player as brought forward by Football Association E and as brought forward by the Federation I; that is, the player passport issued by the Federation I indicated that the player was registered with the Respondent on 2 October 2009, whereas Football Association E indicated that it had registered the player with the Respondent on 29 September 2009.
10. Turning its attention to the evidence on file, the Chamber noted that, on 27 August 2009, Football Association E had requested the player's ITC from the Federation I and noted as well that, on 7 September 2009, the Football Association E had sent a second request for the said ITC. Equally, the Chamber noted that, on 29 September 2009, Football Association E had registered the player on a provisional basis.
11. In this context, the Chamber referred to art. 3 of Annexe 3 of both the 2008 and 2009 edition of the Regulations on the Status and Transfer of Players and pointed out that said article provides, *inter alia*, that the former association shall, within seven days of receiving the ITC request, issue the ITC to the new association as well as that in case the new association does not receive a response to the ITC request within 30 days, it shall immediately register the player with the new club on a provisional basis.
12. The Chamber noted that the ITC request of Football Association E remained unanswered by the Federation I, *i.e.* the Federation I did not issue the ITC of the player to Football Association E within seven days of receiving the ITC request from

Football Association E nor had Football Association E received any response from the Federation I to such ITC request within 30 days. In this sense, the Chamber was eager to point out that in view of such request remaining unanswered; Football Association E had followed the correct procedure and rightly registered the player on a provisional basis on 29 September 2009. The fact that the Federation I issued the actual ITC on 2 October 2009 only, does, as such, not affect the date of the registration of the player in the country E. Hence, the obligation to pay training compensation arose on the very moment that the player was registered as a professional by Football Association E and, in the Chamber's opinion, it is evident that, thus, in the case at hand, the date to be considered as the relevant date to determine which regulations are applicable as to the substance of the present dispute, is the date on which the player was provisionally registered by The Football Association E, i.e. 29 September 2009.

13. In view of all the foregoing, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2010), the 2008 version of the Regulations on the Status and Transfer of Players (hereinafter: Regulations) is applicable to the matter at hand as to the substance.
14. The competence of the Chamber and the applicable Regulations having been established, the Chamber entered into the substance of the matter.
15. First of all, the Chamber recalled that the player was born on 22 August 1993 and was registered with the Claimant as from 25 July 2003 until 1 July 2007 as an amateur player.
16. In continuation, the Chamber took note that the Claimant asserted that it was entitled to receive training compensation from the Respondent in the amount of EUR 100,000, since the player had signed his first professional contract with the Respondent.
17. Equally, the Chamber took note that the Respondent rejected the Claimant's claim for the payment of training compensation as long as the Claimant did not prove that it was in fact a purely amateur club and therefore not in the position to offer its players professional contracts.
18. In this respect, and hereby referring to the rules applicable to training compensation, the Chamber stated that, as established in art. 1 par. 1 of Annexe 4 in combination with art. 2 of Annexe 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23<sup>rd</sup> birthday.
19. Moreover, the Chamber referred, in particular, to art. 6 of Annexe 4 of the Regulations, which contains special provisions regarding players moving from one

Association to another Association inside the territory of the European Union (EU)/European Economic Area (EEA).

20. In view of the above, the Chamber stated that it had to verify whether art. 6 par. 3 of Annexe 4 of the Regulations applies in the present case as *lex specialis*, and, in the affirmative, to determine if the Claimant had complied with the said provision in order to be entitled to training compensation.
21. As far as the applicability of art. 6 par. 3 of Annexe 4 of the Regulations is concerned, the Chamber stated that, as the player moved from I to E *i.e.* moved from one Association to another Association inside the territory of the EU, the said article is applicable. Therefore, the Chamber concluded that the aforementioned provision applies in the case at hand as *lex specialis*.
22. However, in this regard, the Chamber pointed out that, *in casu*, a possible obligation to offer the player a contract in compliance with art. 6 par. 3 of Annexe 4 of the Regulations would in principle lie with the former club of the player and not with the Claimant. As stated in art. 6 par. 3 of Annexe 4 of the Regulations, said provision is without prejudice to the right to training compensation of the player's previous club(s).
23. On account of the above considerations, the Chamber decided that the Respondent is liable to pay training compensation to the Claimant in accordance with art. 20 and Annexe 4 of the Regulations.
24. Turning its attention to the calculation of training compensation, the Chamber referred to the FIFA circular no. 1185 dated 22 April 2009 which provides details for the calculation of training compensation as well as to art. 5 par. 1 and par. 2 of Annexe 4 of the Regulations, which stipulate that as a general rule, to calculate the training compensation due to a player's former club, it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself. Furthermore, the Chamber referred to art. 5 par. 3 of Annexe 4 of the Regulations which stipulates that: "*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 12<sup>th</sup> and 15<sup>th</sup> birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs*".
25. In this context, since the player was registered with the Claimant during the seasons of his 12<sup>th</sup> and 13<sup>th</sup> birthday, the training costs shall be based on the training and education costs of category 4 clubs, *i.e.* EUR 10,000 per year.
26. In continuation, the Chamber took into account that the player was registered with the Claimant as from 25 July 2003 until 1 July 2007, whilst reiterating that training compensation is payable for training incurred between the ages of 12 and 21 (*cf.* art. 1 par. 1 of Annexe 4 of the Regulations).

27. Consequently, taking into account the above-mentioned considerations, the Chamber decided that the Respondent is liable to pay training compensation to the Claimant in the amount of EUR 20,000.
28. Moreover, taking into consideration the Claimant's claim as well as art. 3 par. 2 of Annexe 4 of the Regulations, the Chamber decided that the Respondent has to pay interest at 5% *p.a.* over the amount payable as training compensation as of the 31st day of the registration of the player with the Respondent, i.e. as of 29 October 2009, until the date of effective payment.
29. The Chamber concluded its deliberations as to the substance of the case by rejecting any further claim of the Claimant.
30. Lastly, the Chamber referred to art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the DRC relating to training compensation and the solidarity mechanism, costs in the maximum amount of CHF 25'000 are levied. It is further stipulated that the costs are to be borne in consideration of the parties' degree of success in the proceedings and that, in accordance with Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.
31. In respect of the above, the Chamber held that the amount to be taken into consideration in the present proceedings is EUR 100,000 related to the claim of the Claimant. Consequently, the Chamber concluded that the maximum amount of costs of the proceedings corresponds to CHF 15,000 (cf. table in Annex A).
32. As a result, and taking into account that the claim of the Claimant has been partially accepted as well as that the Respondent rejected the Claimant's claim in its entirety, the Chamber concluded that both the Claimant as well as the Respondent have to bear a part of the costs of the current proceedings in front of FIFA.
33. Considering the above, the Chamber determined the costs of the current proceedings to the amount of CHF 12,000, CHF 4,000 of which shall be borne by the Claimant and CHF 8,000 of which shall be borne by the Respondent.

1. The claim of the Claimant, A, is partially accepted.
2. The Respondent, M, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 20,000 plus 5% interest *p.a.* due as from 29 October 2009 until the effective date of payment.
3. In the event that the aforementioned sum is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further claim lodged by the Claimant is rejected.
5. The final amount of costs of the proceedings in the amount of CHF 12,000 are to be paid as follows:
  - 5.1 CHF 8,000 by the Respondent 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: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A
  - 5.2 CHF 4,000 by the Claimant, CHF 2,000 of which have already been paid by the Claimant to FIFA as advance of costs.
6. The Claimant is directed to inform the Respondent 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.

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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  
1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
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e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
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For the Dispute Resolution Chamber:

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Jérôme Valcke  
Secretary General

Enclosed: CAS directives