

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 Gazidis (England), member

Guillermo Saltos Guale (Ecuador), member

on the claim presented by the club,

W,

as Claimant

against the club,

B,

as Respondent

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

I. Facts of the case

1. The Football Federation N (hereinafter: the *FFN*) confirmed that the player, M (hereinafter: the *player*), born on 27 May 1987, was registered with its affiliated club, W (hereinafter: the *Claimant*), from 2 August 1999 until 8 September 2005 as an amateur.
2. The sporting season in the country N runs from 1 August to 31 July of the following year.
3. The player was registered with the club B (hereinafter: the *Respondent*) on 20 September 2005 as an amateur.
4. The Football Federation P (hereinafter: the *FFP*) confirmed that the Respondent belonged to the category II (indicative amount of EUR 60,000 per year within UEFA) during the season 2005/2006 when the player was registered with the said club.
5. The FFN confirmed that the Claimant belonged to the category IV (indicative amount of EUR 10,000 per year within UEFA) during the seasons 1999/2000, 2000/2001, 2001/2002 and to the category II (indicative amount of EUR 60,000 per year within UEFA) during the seasons 2002/2003, 2003/2004 and 2004/2005.
6. On 9 January 2007, the Claimant contacted FIFA asking for its proportion of training compensation from the Respondent since the player allegedly signed his first professional contract with the Respondent. The Claimant enclosed a copy of the employment contract the player signed with the Respondent and according to which he is entitled to receive EUR 1,500 per month during the season 2005/2006.
7. In its reply, the Respondent rejected the claim lodged by the Claimant and held that it never signed any professional employment contract with the player. According to the Respondent, the player was only registered for the "*junior category*" and not as a professional and therefore no training compensation is due to the Claimant.
8. On 3 June 2008, the Claimant informed FIFA that it maintains its position. In this respect, it pointed out that the monthly remuneration received by the player is an amount which exceeds his actual expenses incurred for the footballing activities, as per the contents of art. 2 par. 1 and 2 of the Regulations on the Status and Transfer of Players. According to the Claimant, irrespective of the registration records from the FFP, the player must be considered as a professional.
9. In its final position, the Respondent stated that it is faced with a complicated financial phase and is waiting for a favourable court decision in order to pay all its debts. In this respect, the Respondent asked to wait with the proceedings until July 2010. On account

of the above-mentioned, the Claimant requested from the Respondent a proposal for a payment plan, which has not been presented by the Respondent.

10. On 9 April 2010, FIFA asked the Claimant to make comments with regard to the contents of art. 6 par. 3 of Annex 4 of the Regulations and, in particular, requested to be informed by the Claimant as to whether it had offered the player a new contract by registered mail at least 60 days before the expiry of the player's former contract with it.
11. In this respect, the Claimant replied that the player had never been registered with it as a professional but always had an amateur status. Therefore, according to the Claimant, it could not provide FIFA with evidence that it had offered a contract to the player.
12. Furthermore, the Claimant alleged that it intended to keep the player in its youth academy for the following season and "*showed this by offering the player (in writing) a place in its youth academy*". The Claimant explained that by doing so, it tried to keep the option of granting him a professional contract at a later stage.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, the Chamber first referred to 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 9 October 2007, thus before the aforementioned Rules entered into force on 1 July 2008. Therefore, the Dispute Resolution Chamber referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2005; hereinafter: *the Procedural Rules*) and concluded that the 2005 edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules, which states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (editions 2008 and 2009). In accordance with art. 24 par. 1 in connection with art. 22 lit. d) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on disputes relating to training compensation between clubs belonging to different associations.
3. Furthermore, 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, the Chamber 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 present claim was lodged on 9 October 2007 and that the player was registered for the Respondent on 20 September 2005. In view of the aforementioned, the Dispute Resolution Chamber concluded that the 2005 edition of the Regulations on 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 Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, the members of the Chamber started to acknowledge the facts of the case as well as the documents contained in the file.
5. The Dispute Resolution Chamber took note that the Claimant had requested training compensation based on the fact that the player had been registered with it for the period comprehended between 2 August 1999 (season of the player's 12th birthday) and 8 September 2005 (season of the player's 18th birthday) as an amateur.
6. In continuation, the Chamber stated that, as established in art. 20 of the Regulations in combination with art. 1 par. 1 of Annex 4 and art. 2 of Annex 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when the player concerned is registered for the first time as a professional, or when a professional is transferred between two clubs of two different Associations, before the end of the season of the player's 23rd birthday.
7. Moreover, the Chamber referred, in particular, to art. 6 of Annex 4 of the Regulations, which contains special provisions for clubs which belong to an association inside the territory of the EU/EEA.
8. In view of the above, the Chamber stated that, first and foremost, it had to verify whether art. 6 par. 3 of Annex 4 of the Regulations applies in the present case as *lex specialis*, and, in the affirmative, to subsequently determine as to whether the Claimant had complied with the aforesaid provision in order to be entitled to training compensation.
9. As far as the applicability of art. 6 par. 3 of Annex 4 of the Regulations is concerned, the Chamber first of all stated that, as the player moved from the country N to the country P in September 2005, *i.e.* between two countries members of the EU, art. 6 par. 3 of Annex 4 of the Regulations is applicable. Therefore, the Chamber concluded that the aforementioned provision applies in the case at hand as *lex specialis*.

10. On account of the aforesaid, the Chamber analysed as to whether the Claimant had complied with the prerequisites of art. 6 par. 3 of Annex 4 of the Regulations in order to be entitled to receive training compensation.
11. According to art. 6 par. 3 of Annex 4 of the Regulations, training compensation is only payable if the former club can justify that it offered the player a contract in writing via registered post at least 60 days before the expiry of his current contract.
12. In this respect, the Chamber was eager to emphasize that art. 6 par. 3 of Annex 4 of the Regulations stipulates explicitly that such an offer shall be at least of an equivalent value to the current contract.
13. With regard to the remittance of such offer, the Chamber consequently analysed as to whether the Claimant offered the player a contract via registered post 60 days before the expiry of his current contract. The Chamber noted that the Claimant had not offered the player a contract via registered post.
14. In this regard, the members of the Chamber pointed out that the Claimant asserted that it intended to keep the player in its youth academy for the following season and *"showed this by offering the player (in writing) a place in its youth academy"* and that the aforementioned was, in the Claimant's point of view, fulfilling the prerequisites provided for in art. 6 par. 3 of Annex 4 of the Regulations.
15. In this context, the members of the Chamber wished to refer to the principle in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof and that, in this particular aspect, no evidence of such a written proposal to stay in the said academy had been made available by the Claimant, who consequently failed to comply with the Rules regarding the burden of proof (art. 12 par. 3 of the Procedural Rules).
16. In continuation to the above, the Chamber also noted that the Claimant asserted that it intended to keep the option open to grant the player a professional contract at a later stage. From this assertion, the Chamber understood that the Claimant would have been in a position to sign a professional contract with the player, if the Claimant wished so, but eventually decided not to do so.
17. In light of the foregoing, the Chamber concluded that, by failing to provide any evidence of having presented an offer to the player in writing to keep the latter in the youth academy, in combination with the fact that the Claimant did not propose a written contract 60 days before the expiry of his current contract, whereas it acknowledged the actual possibility of such a proposal, the Claimant is not entitled to claim any training compensation from the Respondent.

18. Finally, and concluding its deliberations in the present affair, the members of the Chamber did not deem appropriate to enter into the substance of the other arguments brought up by the parties to the present dispute.
19. In view of all the above, the Dispute Resolution Chamber concluded that the claim of the Claimant for training compensation was to be rejected.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, W, 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:

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For the Dispute Resolution Chamber

Jérôme Valcke
Secretary General

Encl. CAS directives