



Arbitration CAS 2014/A/3500 FC Hradec Kralove v. Genoa Cricket and Football Club, award of 23 September 2014

Panel: Mr José María Alonso Puig (Spain), President; Mr Mika Palmgren (Finland); Ms Margarita Echeverría Bermúdez (Costa Rica)

Football

Compensation for training

Applicable regulations in cases of compensation for training

Calculation of compensation for training

1. In cases of training compensation the “disputed facts” in the meaning of Article 26 of the Regulations on the Status and Transfer of Players (“RSTP”) stand for the time during which a player trained with a club as an amateur.
2. Training compensation is determined by the time in which a player was a member of the club with which he trained as an amateur. The right to compensation is effectively born when a player signs his first professional contract or, eventually, when - as a professional - a player is transferred between clubs of different associations before the end of the season of his 23rd birthday. However, the amount of compensation must be determined by the regulations that were in place at the time during which a player trained with his club of origin, irrespective of future changes. Therefore a difference exists between the moment on which the right for compensation is born and can be duly exercised, and the determination of the contents of such right; the latter must be determined according to the regulations in force at the time during which a player trains as an amateur with his club of origin. This is because according to the RSTP and its Annex 4, the purpose of said rules is to save/protect the club’s financial investments in training players at the time when the training happened. Further the rationale behind training a player is that eventually he becomes a professional. Thus, the training compensation is calculated based on the training costs of the club and according to the rules at the time when training was undertaken.

I. PARTIES

1. FC Hradec Kralove (the “Appellant” or “FC Hradec”) is a football club based in the city of Hradec Kralove, Czech Republic.
2. Genoa Cricket and Football Club is a professional cricket and football club based in the city of Genoa, Italy (the “Respondent” or “Genoa FC”).

3. The Appellant and the Respondent are hereinafter referred to collectively as the “Parties”.

II. FACTUAL BACKGROUND

4. Between the ages of 10 and 15 years, the Czech amateur football player L. (the “Player”) educated and trained with FC Hradec during the sporting seasons of 2004/2005 to 2008/2009 (i.e. from 18 August 2004 to 17 August 2009). On 18 August 2009, the Player was loaned to SK Slavia Praha, another Czech club, where he remained until 2 September 2011.
5. The Player did not return to the FC Hradec following the period of his loan.
6. On 2 September 2011, the Player signed his first professional football contract with Genoa FC, following which Genoa FC registered the Player on FIFA’s Transfer Matching System indicating that it “*engaged the player out of contract, free of payment from SK Slavia Praha*”.
7. Thereafter, on 7 February 2012, the Appellant contacted FIFA claiming the payment of training compensation from the Respondent, as provided in Annex 4 of the Regulations on the Status and Transfer of Players (the “Regulations”), on the grounds that the Player had signed his first professional contract with the Respondent. The Appellant claimed an amount due of EUR 240,000 from the Respondent.
8. On 28 June 2013, the FIFA Dispute Resolution Chamber (the “DRC”) issued the following decision (the “Challenged Decision”):
 1. *The claim of the Claimant, FC, Hradec Kralove, is partially accepted.*
 2. *The Respondent, Genoa Cricket and Football Club, has to pay to the Claimant the amount of EUR 45,000, within 30 days as from the date of notification of this decision.*
 3. *In the event that the aforementioned sum is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of the date of expiry of the stipulated time limit and 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 costs of the proceedings in the amount of CHF 16,000 are to be paid within 30 days as from the date of notification of the present decision, as follows:*
 - 5.1 *The amount of CHF 3,000 by the Respondent to FIFA to the following bank account [...].*
 - 5.2 *The amount of CHF 13,000 by the Claimant to FIFA. Given that the Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the amount of CHF 8,000 is to be paid to FIFA to the above-mentioned bank account [...].*

6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under point 2. above 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. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Courts 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).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. On 14 February 2014, the Appellant filed its Statement of Appeal pursuant to Article R47 et seq. of the Code of Sports Related Arbitration (the “Code”). In its Statement of Appeal, the Appellant appointed Mr. Mika Palmgren as arbitrator.
10. On 26 February 2014, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.
11. On 3 March 2014, the Court of Arbitration for Sport (“CAS”) acknowledged receipt of the Statement of Appeal and Appeal Brief, and invited the Respondent to file its Answer pursuant to Article R55 of the Code and nominate an arbitrator accordingly.
12. On 10 March 2014, the Respondent nominated Ms. Margarita Echeverría as arbitrator.
13. On 13 March 2014, FIFA informed CAS that it renounced to its right to request its intervention in the arbitration proceedings, pursuant to Articles R54 and R41.3 of the Code, and provided a clean copy of the Challenged Decision.
14. On 21 March 2014, the CAS Court Office, upon request of the Respondent, suspended the Respondent’s deadline to pay its share of the advance of costs until such time as the Appellant paid its share of the required costs, pursuant to Article R55 of the Code.
15. On 2 May 2014, the Respondent filed its Answer pursuant to Article R55 of the Code.
16. On 5 May 2014, CAS Court Office informed the Parties that, pursuant to Article R54 of the Code, the Panel appointed to decide this appeal is constituted as follows:

President: José María Alonso Puig, attorney-at-law in Madrid, Spain

Arbitrators: Mr. Mika Palmgren, attorney-at-law in Turku, Finland

Ms. Margarita Echeverría Bermúdez, attorney-at-law in San José, Costa Rica.

17. On 5 May 2014, the CAS Court Office requested the Parties to state their preference as to whether a hearing shall be held in this case.
18. On 12 May, the Appellant informed CAS that it preferred a hearing to be held in this case. The Respondent, however, suggested that this case be heard on written submission only.
19. On 28 May 2014, FIFA filed a letter submission with the CAS Court Office responding to some of the allegations made by the Appellant in this appeal, and providing certain FIFA DRC jurisprudence concerning the regulations at stake in these proceedings.
20. On 4 June 2014, the CAS Court Office confirmed the Panel's desire to hold a hearing in this appeal.
21. On 25 June 2014, both the Appellant and the Respondent sent the CAS Court Office a signed copy of the Order of Procedure. On 1 July 2014, the hearing was held at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS. The Appellant was represented by Vycheslav Bytsanov and Yuriy Serdyuk, and assisted by Nataliya Makukha (interpreter). The Respondent was represented by Paulo Lombardi.
22. On 11 July 2014, the Appellant filed a submission on costs that had not been requested by the Panel.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

A. THE APPELLANT: FC HRADEC KRALOVE

i. Appellant's position

23. The Appellant argues that the conclusions reached by the DRC do not comply with Article 20 of the Regulations, pursuant to which training compensation shall be paid to a player's training club when a player signs his first contract as a professional.
24. The calculation of the amount of training compensation is carried out in accordance with Article 5 of Annex 4 of the Regulations. Considering that both clubs are based inside the territory of the UE/EEA, that the Appellant is a third category club (30,000 EUR) and the Respondent is a first category club (90,000 EUR), the calculation shall be based on the indicative amount of 60,000 EUR per season played by the Player.
25. Based on this provision, the training compensation claimed by FC Hradec amounts to 181,644 EUR calculated as follows (calculations as provided by FC Hradec in its written submissions):
 - 07 August 2005 to 06 August 2006: 60,000 EUR
 - 07 August 2006 to 06 August 2007: 60,000 EUR
 - 07 August 2008 to 06 August 2009: 60,000 EUR

- 07 August 2009 to 17 August 2009: 1,644 EUR
- 26. The Appellant argues that although, in this case, the costs are high, they are reasonable as the Player signed his professional contract before the end of the season of his 18th birthday, which establishes that he is a very valuable player (thus, worth the expense).
- 27. The Regulations came into force on 1 October 2010. The Player was registered with the Respondent on 2 September 2011. Therefore, at the time of registration, the regulations in force were the Regulations as claimed by the Appellant.
- 28. The transitional provisions of the Regulations (Article 26) provide that they apply to any case arising after their entry into force with the exception of, inter alia, disputes regarding training compensation. Training compensation disputes 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*”. In this case, the disputed facts arose when the Player signed his first professional contract with the Respondent, on 2 September 2011 and, thus, the applicable regulations are the Regulations. This was confirmed by the DRC decision No. 4111875.
- 29. Therefore, the Appellant argues that the DRC erred in its decision.

ii. Prayers for relief

- 30. The Appellant thus requests the following:

1. To accept Statement of appeal and consequently, cancel the decision of FIFA dated 28.06.2013.

2. To acknowledge that the Appellant has a right to obtain an amount of the training compensation for training the player [L.] in accordance with the periods of education of the Player in FC Hradec Kralove:

07.08.2005/06.08.2006 - 60 000 EURO

07.08.2006/06.08.2007 - 60 000 EURO

07.08.2008/06.08.2009 - 60 000 EURO

07.08.2009/17.08.2009 - 1 644 EURO

Total: 181 644 (one hundred and eighty one thousand six hundred forty four) EURO

3. To obligate the Respondent to pay for the Appellant's benefit the following monetary funds in amount of EURO 181 644 - as a training compensation sum that has not been paid so far and to award financial sanctions from the Respondent for benefit of FC Hradec Kralove, in amount of 5% interest per annum for unjustified delay in payment;

4. To obligate the Respondent to reimburse the monetary funds paid by the Appellant in connection with the consideration of present case. In particular:

- *Advance of costs in FIFA Bodies in amount of 5000 CHF and also 8000 CHF for the consideration of case in FIFA;*

- *CAS Court Office fee in the amount of 1000 CHF and costs of arbitration;*
- *funds spent for the legal assistance, transport charges, accommodation expenses and other funds connected with consideration of case.*

B. THE RESPONDENT: GENOA CRICKET AND FOOTBALL CLUB

i. Respondent's position

31. The Respondent understands that this proceeding revolves around the application of Article 5.3 of Annex 4 of the Regulations in force until 1 October 2009. Pursuant to such provision, training compensation for clubs involved in the training of players between the ages of 12 and 15 shall be based on the training costs of category 4 clubs (i.e. EUR 10,000 per year) instead of the generally applicable rule.
32. This provision was subject to an amendment, pursuant to which, if the event giving rise to training compensation arises before the end of the season of the player's 18th birthday, the general rules shall apply. This amendment, however, was introduced by FIFA in its circular letter n° 1190, issued to members of FIFA on 20 May 2009 (attached as Annex 1 to the Answer). Pursuant to the first paragraph of said letter, such amendment would come into force on 1 October 2009. Therefore, as the provision came into force when the Player was no longer registered with the Appellant, it is not applicable to this case and the previously applicable rule (Article 5.3 of Annex 4 of the Regulations in force until 1 October 2009) must apply.
33. The DRC recognized this, noting that applying the amendment to the period in which the Player was registered with the Appellant (August 2005 to August 2009) would violate the principle of non-retroactivity of law, recognized by legal systems world-wide. This approach fully complies, according with the Respondent, with longstanding FIFA jurisprudence.
34. As was noted in CAS 2009/A/1919 "*new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future*".
35. Finally, regarding the Appellant's request for the procedural costs in the DRC proceedings, the Respondent submits that it should be rejected, as it affects the financial status of FIFA, who is not a part to these proceedings.

ii. Prayers for relief

36. The Respondent thus requests the following:

- 1. We request that the Appellant's appeal be rejected and the decision rendered by the Dispute Resolution Chamber confirmed in its entirety.*
- 2. In any case, we request this Honourable Court to order the Appellant to bear all costs incurred with this appeal.*
- 3. In any case, we request this Honourable Court to order the Appellant to cover the Respondent's legal costs related to this appeal, which by the end of these proceedings will amount approximately CHF12'000.*

V. JURISDICTION, ADMISSIBILITY, AND APPLICABLE LAW

A. JURISDICTION

37. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

38. Articles 66 and 67 par. 1 of the FIFA Statutes (2013 edition) allow for appeals of the FIFA Committee's decision to be appealed to CAS (with various exceptions which do not apply in this case). Moreover, both Parties agree that the CAS has jurisdiction to hear and resolve this dispute. Having signed the Order of Procedure, the Panel is satisfied that it has jurisdiction to decide this case.

B. ADMISSIBILITY

39. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

40. The Appealed Decision is dated 28 June 2013, but was not served with grounds on the Appellant until 27 January 2014. The statement of appeal was filed on 14 February 2014. The appeal, therefore, is admissible.

C APPLICABLE LAW

41. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenge decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

42. In the present case it is disputed between the Parties which regulations are the "applicable regulations" for the purposes of Article R58 of the Code. In particular, the Parties disagree on the applicability of an amendment to the Regulations that came into force on 1 October 2009. The Appellant claims that such amendment is applicable because when the claim for training compensation arose (the time of registration of the Player with the Respondent), such amendment was already in force. The Respondent, however, holds that such amendment is not

applicable because during the period when the Player was registered with the Appellant, the amendment was not in force and it only came into force after the Player was no longer registered with the Appellant.

43. Article 5.3 of the Regulations in force until 1 October 2009 provided as follows:

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.

44. On the other hand, Article 5.3 of the Regulations in force after 1 October 2009 and on 2 September 2011 (date of registration of the Player as a professional with the Respondent) provides as follow:

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. This exception shall, however, not be applicable where the event giving rise to the right to training compensation (cf. Annexe 4 article 2 paragraph 1) occurs before the end of the season of the player's 18th birthday.

45. Because FIFA is a Swiss association, the determination of the applicable FIFA regulations shall be made under the light of Swiss law.

46. Pursuant to Article 26 of the Regulations:

1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.

2. 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;

(...)

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.

47. In this case, the Panel must agree with the DRC in the Challenged Decision where it stated that it “cannot apply said amendment to the years of training and education of the player prior to the coming into force of the amended art. 5 par. 3 of Annexe 4, i.e. prior to 1 October 2009. In other words, the Chamber concurred that the said provision could not be applied retro-actively and, consequently, decided that the second sentence of art. 5 par. 3 of Annexe 4 of the Regulations does not apply to the seasons 2005/2006 to 2008/2009 during which the player was registered with the Claimant”. Indeed, the “disputed facts” (i.e. the time during which the Player trained with the Appellant) occurred before the entry into force of the 1 October 2009 amendments.

48. The seasons on which the Player trained with FC Hradec that give right to the Appellant to

claim training compensation, had, at the time of entry into force of the amended Regulations, already elapsed. They were therefore, to the effect of application of said amendments, events that had already been completed before the entry into force of the amendment. Applying the amended regulations to seasons that had already elapsed upon their entry into force would be contrary to the prohibition of retroactive application of the law.

49. As provided in case CAS 2006/A/1181, the prohibition of issuing rules having retrospective effect *“is understood to be a prohibition -aimed first and foremost at the state legislator- of applying statutory amendments retrospectively to events completed in the past”*. Furthermore, this same award found that *“according to the case law of the Swiss Supreme Court, a rule of law can be given a retrospective effect if this retrospective effect is expressly mentioned in the statutes which contain the rule, if the retrospective effect is limited in terms of time, if it does not lead to serious inequality, if it is justified by relevant grounds and if it does not infringe vested rights (see decision of the Swiss Supreme Court published in ATF 119 I a page 254, especially page 258)”*.
50. Training compensation is determined by the time in which a player was a member of the club with which it trained as an amateur. The right to compensation is effectively born when a player signs his first professional contract or, eventually, when as a professional a player is transferred between clubs of different associations before the end of the season of his 23rd birthday. However, the amount of compensation must be determined by the regulations that were in place at the time during which a player trained with his club of origin, irrespective of future changes. A difference exists between the moment on which the right for compensation is born and can be duly exercised, which happens when the player signs his first professional contract or is subsequently transferred, and the determination of the contents of such right, that must be done according to the regulations in force at the time during which a player trains as an amateur with his club of origin.
51. Indeed, time elapsed in training is an accomplished fact and compensation for said training cannot change only because amendments are introduced after the player finished his training. It is true that the right to claim for compensation is only eventually born because of a future event, but it is configured in anticipation of that moment when the player trains as an amateur with its club. When an amateur signs his first professional contract or, as a professional, is transferred between associations before the end of the season of his 23rd birthday, a right for compensation that was quantified by the regulations in force for the periods during which the player trained with his club of origin is then born.
52. According to the Regulations on the Status and Transfer of Players and its Annex 4, the purpose of said rules is to save/protect the club’s financial investments in training players at the time when the training happened. Also the rationale behind training a player is that he eventually becomes a professional. Thus, the training compensation is calculated based on the training cost of the club and according to the rules at that time when training were undertaking.
53. Holding to the contrary, apart from breaching the prohibition of retroactive application of the law, would lead to absurd results. The Panel cannot hold that the same training period, for the same player and regarding the same club, could lead to different compensation depending exclusively on the date on which the player signs his first professional contract or is transferred.

If, for example, a player signed his first professional contract before 1 October 2009 and was then, after 1 October 2009, transferred to another association before his 23rd birthday, the Panel cannot uphold that the basis for calculation of both compensations due to the club of origin, for exactly the same training period and player, may be different based on a retroactive application of the 1 October 2009 amendments.

54. As a consequence of the above, the Panel finds that training compensation must be calculated pursuant to the Regulations in force before 1 October 2009.

VI. MERITS

A. RIGHT TO TRAINING COMPENSATION

55. The Panel notes that, contrary to the discussion before the DRC, the Respondent no longer contests the right of the Appellant for training compensation. As the DRC found that the Appellant had a right to training compensation and such issue is not under discussion in this appeal, the Panel is satisfied on the Appellant's entitlement to such compensation.

B. AMOUNT OF TRAINING COMPENSATION

56. The only issue under discussion lies on the amount of training compensation due to the Respondent. However, the discussion effectively laid on the regulations applicable to the calculation of the same. Having determined that the applicable regulations are the Regulations in force before 1 October 2009, calculation of training compensation bears no controversy.
57. The Panel notes that neither the Appellant nor the Respondent contest the calculation done by the DRC regarding the compensation payable, should the Panel find that the applicable regulations were the Regulations in force before 1 October 2009.
58. In any case, the Panel is satisfied that the calculation carried out by the DRC is correct, being the Appellant entitled to the 45,000 EUR acknowledged in the Challenged Decision:

In accordance with art. 20 in combination with Annexe 4 of the Regulations, the DRC considered that the claimant is, thus, entitled to receive training compensation for the period as from 1 August 2005 until 17 August 2009 i.e. for the full sporting seasons of 2005/2006 until and including the 2008/2009 season (seasons of the player's 12th and 15th birthday), and 1 month of the 2009/2010 season (season of the player's 16th birthday).

59. Indeed, the Appellant is entitled to:
- 40,000 EUR corresponding to 10,000 EUR per season corresponding to a category 4 club (Rule 5.3 of Annex 4 of the Regulations) for 4 seasons; and
 - 5,000 EUR corresponding to the proportion equivalent to one month of 60,000 EUR per season (Rule 6.1.a) of Annex 4 of the Regulations).
60. The Panel, in conclusion, finds that the DRC correctly issued the Challenged Decision and the

Appeal must, therefore, be dismissed.

61. Having found against the Appellant's principal claim, the Panel must dismiss the rest of the Appellant's prayers for relief. In particular, the Panel does not need to enter into the merits of the Appellant's request for reimbursement of the costs of the FIFA proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 14 February 2014 by FC Hradec Kralove is rejected.

(...)
4. All other motions or prayers for relief are dismissed.