Arbitration CAS 2013/A/3432 Manchester United FC v. Empoli FC S.p.A., award of 21 July 2014

Panel: Mr José Juan Pintó Sala (Spain), Sole Arbitrator

Football
Compensation for training
Inadmissibility of counterclaims in CAS appeal proceedings
Characterisation of a submission as counterclaim
Proportionality of training compensation
Compensation for the procedural costs incurred in the first instance proceedings

1. **From the amendment of January 2010 of Article R55 of the CAS Code, the new wording of the aforesaid article determines that it is no longer possible to file a counterclaim within an appeal procedure to challenge a decision; thus the only way to do it is through an independent appeal to be filed in due time. In fact, the possibility to submit a counter appeal within the framework of an already existing appeal is a procedural right which does not exists *per se* unless it is clearly granted under the Regulations or the Code governing the proceedings. Article R57 of the CAS Code does not constitute a legal basis for counterclaims.**

2. **In order to determine whether a submission filed within an answer to the appeal could be deemed as a counterclaim, it has to be considered whether the submission made has the effect of prejudicing the position of the party against whom it has been raised or whether it is merely aimed at defending the validity of the appealed decision.**

3. **A party claiming the disproportionality of a training compensation under Article 5.4 of Annex 4 to the FIFA Regulations on the Status and Transfer of Players has to adduce facts and evidence establishing its allegation.**

4. **A party to CAS appeal proceedings which – already prior to the commencement of first instance proceedings – has fulfilled all its obligations towards the other party, shall not be held liable for any of the procedural costs derived from the first instance proceedings.**

I. THE PARTIES

1. Manchester United FC (hereinafter "Manchester" or the "Appellant") is an English football club with seat in Manchester, United Kingdom. It is a member of the Football Association (the

"FA"), affiliated to the Fédération Internationale de Football Association (hereinafter also referred to as "FIFA").

2. Empoli FC S.p.A. (hereinafter "Empoli" or the "Respondent") is an Italian football club with seat in Empoli, Italy. It is a member of the Federazione Italiana di Giuoco di Calcio ("FIGC"), affiliated member of FIFA.

II. THE FACTS

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the parties' submissions and the evidence provided by them. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in its Award only to the submissions and evidence he deems necessary to explain its reasoning. However, the Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

II.1 THE TRAINING COMPENSATION IN DISPUTE

4. A. (hereinafter "the Player"), born on 27 May 1993, is an Italian football player who was registered as an amateur with Empoli for several periods (i.e. from 10 October 2003 until 1 July 2004, from 8 October 2004 until 1 July 2005, from 19 September 2005 until 1 July 2006, and from 30 August 2006 until 29 August 2008).

5. The player was registered on loan for the Italian club Cuoiopelli Cappiano Romaiano S.r.l. ("Cuoiopelli") from 29 August 2008 until 30 June 2009 (hereinafter the "Loan Period"), and returned to Empoli once the loan agreement expired.

6. On 1 July 2009, the Player signed a Scholarship Agreement with Manchester, who then applied to register the Player. The registration finally took place on 13 October 2009.

7. Subsequently, Manchester and Empoli tried to settle the amount of the training compensation that the first would have to pay the latter for the training of the Player under Article 20 and Annexe 4 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Regulations"). However, the parties did not agree on the calculation of the training compensation and thus, in May 2011, Manchester paid Empoli the amount it believed it had to pay pursuant to the FIFA Regulations (EUR 46.397).

II.2 THE PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF FIFA

8. On 13 June 2011, Empoli filed a claim against Manchester before the Dispute Resolution Chamber of FIFA (hereinafter the "DRC"), requesting the payment of training compensation for the amount of EUR 345,000 (i.e. EUR 298,603 after deducting the partial payment of EUR 46,397 already paid by Manchester), plus default interest of 5% p.a. to be paid from 13 November 2009. In this claim, Empoli did not request any training compensation in connection with the Loan Period.

9. Manchester rejected Empoli's claim, arguing that it had already paid Empoli any and all amounts that the latter was entitled to receive as training compensation for the Player in accordance with the FIFA Regulations.

10. On 28 June 2013, the DRC passed a decision that partially accepted Empoli's claim, and ordered Manchester to pay to Empoli the amount of EUR 61,936 plus interest of 5% p.a. on said amount as from 13 November 2009 until the date of effective payment. The operative part of this decision reads as follows:

> *1. "The claim of the Claimant, Empoli FC, is partially accepted.*
>
> *2. The Respondent, Manchester United FC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 61,936 plus interest of 5% p.a. on said amount as from 13 November 2009 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest 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 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 has to be paid by the Respondent to FIFA to the following bank account with reference to case no. 12-02647/led:*
>
> [bank details]
>
> *5.2. The amount of CHF 13,000 has to be paid 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 Claimant has to pay the amount of CHF 8,000 to FIFA to the above-mentioned bank account with reference to case no. 12-02647/led.*
>
> *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".*

11. On 22 November 2013, upon request from Manchester, FIFA notified the grounds of the referred decision.

12. Empoli did not request the grounds of the decision passed by the DRC.

II.3 THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

13. On 13 December 2013, Manchester filed a Statement of Appeal against Empoli and FIFA before the CAS challenging the referred Decision of the DRC dated 28 June 2013 (hereinafter

the "Appealed Decision") and asking the CAS to decide in an award that:

"I. the Appeal is admissible and well-founded; and

II. the Decision is annulled on the grounds that the DRC erred in its calculation of the First Respondent's Training Compensation entitlement under the FIFA Regulations in respect of the Player; and

III. the Appellant has already fulfilled its obligations to pay Training Compensation to the First Respondent under the FIFA Regulations in respect of the Player and thus no further Training Compensation is due; and

IV. the Respondents shall pay in full or in the alternative a contribution towards:

i) the costs and expenses, including the Appellant's legal costs and expenses, pertaining to these appeal proceedings before the CAS; and

ii) the costs and expenses, including the Appellant's legal costs and expenses, pertaining to the proceedings before the DRC; and

V. the Appellant is not liable to pay the procedural costs awarded against it in the Decision".

14. The Appellant requested the appointment of a Sole Arbitrator to deal with the dispute, and that English was the language of the proceedings.

15. On 20 December 2013, FIFA sent a letter to the CAS in which:

- It requested to exclude FIFA from the appeals procedure, on the basis that (i) the appeal procedure related to a private dispute in connection with the payment of training compensation that did not concern FIFA, having the DRC merely acted as the competent body of the first instance and not as party to the dispute, (ii) the appealed decision did not have disciplinary nature and (iii) the appeal did not contain any substantial request against FIFA.

- It proposed to the parties to re-submit the matter at hand to the DRC and let it pass a new decision with regard to the correct calculation of training compensation. In particular, such proposal was made by FIFA in the following terms:

  "[...] after a thorough examination of the appealed decision, we have noted that, due to an oversight of the FIFA administration, it appears that not all the pertinent information in relation to the player's registration details with Empoli FC S.p.A. have been properly submitted to the attention of the Dispute Resolution Chamber when passing its decision on 28 June 2013. In particular, it appears that, regretfully, the information in relation to the period of time the player spent on loan with a third club has not been made available to the Chamber's attention. The foregoing observation could, potentially, be the reason why the Appellant is currently appealing the relevant decision.

  On account of the above and in order to avoid potentially unnecessary proceedings in front of the Court of Arbitration for Sport, we would like to propose to the parties to the relevant dispute at the basis of

the challenged decision to re-submit the matter at hand to the Dispute Resolution Chamber, which would then be in a position to reconsider the matter based on the complete set of facts, and finally pass a decision replacing the previous decision taken on 28 June 2013. In this context, please be informed that should such proposal be approved by the parties, the complete file pertaining to the matter of training compensation will be re-considered by the Dispute Resolution Chamber at its next possible meeting and the outcome of such re-consideration will, as usual, be completely dependent solely on the Chamber's appreciation of the newly submitted set of facts".

16. On 23 December 2013, the CAS requested the parties to inform whether they agreed with FIFA's proposal to re-open the procedure before the DRC and terminate the proceedings before the CAS, and informed FIFA that it was not for the CAS to remove a party from the proceedings.

17. On the same date, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code of Sports-related Arbitration (2013 edition) (the "CAS Code"), reiterating the request for relief contained in the Statement of Appeal.

18. On 24 December 2013, the Appellant informed the CAS that it declined FIFA's proposal to re-open the case before the DRC, as the matter had been ongoing for over two years and it wanted to settle the dispute as soon as possible by means of a final and binding CAS award. With regard to FIFA's petition to be excluded of the Appeal procedure, the Appellant stated that it would consent to withdraw its Appeal against FIFA on the condition that the latter accepted that any decision of the CAS was binding upon it and, in particular, any decision which may vary or overturn the costs award made against Manchester.

19. On 6 January 2014, the CAS informed FIFA and Empoli that the Appellant had declined FIFA's proposal to re-open the proceedings before the DRC and that, therefore, the proceedings would continue. In the same correspondence, the CAS requested FIFA to provide its position with regard to the Appellant's conditions to withdraw its appeal against FIFA.

20. On 9 January 2014, Empoli requested the CAS that the time limit for filing of its Answer to the Appeal be fixed after the payment by the Appellant of the advance of costs, in accordance with Article R55 of the CAS Code.

21. On 10 January 2014, the CAS informed the parties that the deadline for Empoli to file its Answer was to be fixed upon receipt of the Appellant's payment of its share of the advance of costs.

22. On the same date, FIFA filed its position in relation to the Appellant's conditions for the potential withdrawal of its Appeal against FIFA, stating that FIFA, as a general rule, recognises all elements of the decisions rendered by the CAS, including those related to the procedural costs and, therefore, that it agreed with the Appellant's proposal.

23. On 13 January 2014, Empoli informed the CAS that the parties had agreed to appoint Mr. José Juan Pintó Sala as Sole Arbitrator in the present matter.

24. On 17 January 2014, the Appellant informed the CAS that it agreed to withdraw the appeal against FIFA, and requested the CAS to issue a *"summary judgment"* on the merits of the case, on the basis that there were no material issues of fact which remained to be proven and that Empoli had not appealed the Appealed Decision, so the only aspect of such decision to be reviewed by CAS was whether training compensation for the Loan Period was payable to Empoli or not.

25. On 20 January 2014, the CAS informed the parties that FIFA had been excluded from the proceedings, and with regard to the Appellant's request for a *"summary judgment"*, it also informed the Appellant that the CAS Code did not provide for such motion and that, consequently, such request was rejected.

26. On 13 March 2014, the CAS acknowledged receipt of the payment done by the Appellant with regard to the advance of costs and gave the Respondent a 20-day time limit to file the Answer to the Appeal. Moreover, the CAS informed the parties that, pursuant to Article R54 of the CAS Code, the President of the CAS Appeals Arbitration Division had appointed Mr. José Juan Pintó Sala as the Sole Arbitrator to decide the case.

27. On 2 April 2014, Empoli filed its Answer to the Appeal, in which it requested the CAS to render an award in the following terms:

    1. *"Reject the appeal of Manchester United FC.*

       Alternatively

    2. *Decide the matter de novo.*

    3. *Decide that the applicable rules to the dispute are the FIFA Regulations on the Status and Transfer of Players 2009 edition.*

    4. *Decide that training compensation is payable by Manchester United FC to Empoli FC for the player A.*

    5. *Calculate the amount of training compensation due in accordance with the applicable rules.*

    6. *Evaluate the proportionality of the amount due in accordance with the applicable regulations and adjust the amount to the circumstances of the case.*

    7. *Decide that the amount payable by Manchester United FC to Empoli FC as training compensation for the player A is EUR 357.123,28.*

    8. *Decide that interest at the rate of 5% p.a. is due on the amount as of the date it fell payable.*

    9. *Award Respondent any further or other relief as the Panel sees fit.*

       In any event

    10. *Decide that Appellant must bear all the costs of the present arbitration.*

11. Decide that the Appellant must compensate the legal costs of Empoli FC incurred in the present proceedings in their full amount".

28. On 3 April 2014, the parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or that the Sole Arbitrator issued an award based solely on the parties' written submissions.

29. On 8 April 2014, Manchester submitted a letter to the CAS requesting that the Appeal was to be determined by the Sole Arbitrator based solely on the parties' written submissions to save time and cost. The Appellant also commented on the Answer to the Appeal filed by Empoli, stating that (i) the Respondent had gone beyond responding to Manchester's appeal, (ii) Empoli had sought to issue a counterclaim in an attempt to circumvent the CAS Code, as such counterclaim was inadmissible given that Empoli had not appealed the Appealed Decision, and (iii) Empoli had failed to advance any valid defence to Manchester's Appeal.

30. On 10 April 2014, Empoli sent a letter to the CAS requesting that the award was to be rendered based on the written submissions of the parties in order to save costs and stating that the letter submitted by Manchester on 8 April 2014 was unsolicited and should thus be ignored by the Sole Arbitrator. Likewise, the Respondent reiterated that according to Article R57 of the CAS Code the Sole Arbitrator has full power to review the facts and the law and that, additionally, requesting the CAS to apply correctly the rules of law applicable in an arbitration procedure cannot be deemed as a counterclaim, so any attempt to limit the scope of review of the Sole Arbitrator was to be rejected.

31. On 15 April 2014, the CAS informed the parties that the Sole Arbitrator would render an award based on the parties' written submissions.

32. On 22 May 2014, the Order of Procedure was sent to the Parties, who both signed the same.

III. LEGAL CONSIDERATIONS

III.1 CAS JURISDICTION

33. The jurisdiction of the CAS, which is not disputed, arises out of Article 67 of the FIFA Statutes (2013 Edition) and Article R47 of the CAS Code.

34. Therefore, the Sole Arbitrator considers that the CAS is competent to rule on this case.

III.2 APPLICABLE LAW

35. Article R58 of the CAS Code reads as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 challenged decision is domiciled or*

according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

36. Article 66.2 of the FIFA Statutes states the following:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

37. Taking the aforementioned provisions into account, the FIFA Regulations and, additionally, Swiss Law are applicable to this case.

III.3 SUMMARY OF THE PARTIES' SUBMISSIONS

38. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

III.3.1 THE APPELLANT

39. The DRC made a fundamental error when calculating Empoli's training compensation entitlement under the FIFA Regulations in respect of the Player. According to the relevant provisions of the FIFA Regulations regarding the calculation of training compensation (i.e. Article 20 of the FIFA Regulations and Articles 1, 3 and 6 of its Annex 4), the amount to be payable should be calculated on a *pro rata* basis according to the period of training that the player spent with each training club.

40. In the case at stake Empoli's training compensation entitlement should be calculated according to the time the Player was registered with and effectively trained by Empoli. However, the Appealed Decision (Section II, Paragraphs 26 and 27 of its Grounds) erroneously established that the Player was registered with Empoli during all the season of his 16th birthday (season 2008-2009) when the truth is that during this season, the Player was mainly registered with Cuoiopelli, having been only trained by the Respondent during 59 days.

41. Even though this fact was confirmed within the DRC proceedings by (i) the Player's Passport issued by the FIGC, (ii) a letter from the FIGC dated 15th April 2013, (iii) the Player's statement submitted to the DRC, the DRC overlooked all these documents and hence gave an incorrect ruling concerning the training compensation for this period.

42. This is also proved by the fact that within the proceedings held before the DRC, Empoli did not claim any training compensation for the Loan Period, thus acknowledging that any training compensation for that period was payable to Cuoiopelli (what Manchester has already done).

43. Therefore, it was undisputed that the Player was not registered with or trained by Empoli during the Loan Period and, thus, the DRC made an obvious error by awarding training compensation to Empoli in respect of the Loan Period.

44. Considering that during the season of the Player's 16th birthday he was only registered with Empoli for 59 days, the total amount to be paid to Empoli as training compensation for this period was EUR 12,123 (i.e. calculated on a *pro-rata* daily basis EUR 75,000 ÷ 365 days × 59 days-), thus decreasing Empoli's total training compensation entitlement to EUR 45,456 (i.e the EUR 33,333 granted by the DRC for the first 4 years of training plus the EUR 12,123 corresponding to this last period).

45. Therefore, as Manchester already paid EUR 46,397 to Empoli it was clear that it had fulfilled its obligations to pay training compensation to Empoli under the FIFA Regulations in respect of the Player and thus no further training compensation was due.

46. While Manchester disagreed, in principle, with the finding of the Appealed Decision that the 2009 version of the FIFA regulations were applicable instead of the 2008 version, it ultimately excluded this ruling from its appeal in view of the Appealed Decision's ruling that the 2009 version of the FIFA regulations could not be applied retroactively to the case at hand rendering the dispute on the applicable set of regulations moot.

47. Finally, given that (i) Manchester was entirely justified to defend its case before the DRC and (ii) Manchester would not have requested the grounds of the Appealed Decision in case the DRC had correctly calculated the training compensation to be paid to Empoli, it should follow that Manchester should not be liable for any of the DRC's procedural costs (i.e. EUR 3,000).

III.3.2 THE RESPONDENT

48. According to the Respondent, the dispute between the parties before the DRC was essentially over three issues: (i) the applicable edition of the FIFA Regulations, (ii) the training period of the player and (iii) the proportionality of the amount of the training compensation. In particular:

    i. With regard to the applicable edition of the FIFA Regulations, the relevant difference in the FIFA Regulations between the disputed editions (2009 and 2008) concerns Article 5.3 of its Annexe 4 *("3. 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")*. In particular, the 2008 edition of the FIFA Regulations did not include the final sentence *("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")* and thus clubs registering very young players under professional contracts also benefitted from the exception contained in the first part of the aforesaid Article 5.3 of the Annexe 4 of the FIFA Regulations (in the case at stake, Manchester registered the Player before the end of the Player's 18th birthday). Empoli therefore claimed the amount of EUR 357,123.28 pursuant to the 2009 Edition of the FIFA Regulations.

    In Empoli's view, although the DRC correctly ruled that the applicable law to the merits of the case was the 2009 Edition of the FIFA Regulations, it misinterpreted the legal

principle of non-retroactivity, by establishing that such Regulations were not applicable to the years of training and education of the player before the entry into force of the amended version of Art. 5 par. 3 of Annexe 4 (i.e. prior to 1 October 2009). According to the Respondent, there is no reason to consider that the amendment carried out by the 2009 revision of the FIFA Regulations should not be applied to the years of training received by the player before this amendment took place. On the contrary, Manchester was fully aware of the new FIFA Regulations entering into force on 20 May 2009 and thus the 2009 Edition of the FIFA Regulations were the applicable Regulations to calculate the training compensation to be paid for the entire training period.

ii. With regard to the training period of the Player, in accordance with the administrative practices of the FIGC, the registration of a player is considered released at the end of each competitive season until a new registration form is submitted for the player the following season. In particular, according to Articles 31 and 33 of the *Norme Organizzative Interne* of the FIGC, a player who has not yet turned 14 years old at the beginning of the season is bound to a club for only one season at a time and is legally free after the season ends. However, the players in reality continue to train with the clubs they play for during the season. The DRC erred in its evaluation of the training period of the Player, that would have had to be considered as uninterrupted between 10 October 2003 and 29 August 2008 and training compensation was due for the entire period.

iii. With regard to the proportionality of the amount of the training compensation to be paid, Empoli submitted that a proportionate amount of training compensation in this matter would be the amount of the costs that Manchester would have incurred if the club had trained the Player itself. If Manchester would have trained the Player itself, the amount that the club would have spent, according to the indicative training costs provided by Article 4.2, Annexe 4 of the FIFA Regulations (i.e. EUR 90,000 for category I clubs in Europe), was EUR 357,123.28.

49. According to the Respondent, it did not request the grounds of the DRC Decision due to the fact that, despite the fact that Empoli's claim was partially upheld, the DRC decided that it was liable for the majority of the costs of the FIFA proceedings (i.e. CHF 13,000), and thus it would have had to pay this amount only for finding out the grounds of the decision of the DRC and discovering which errors it had committed. With an appeal to the CAS bringing further substantial costs, Empoli decided that it could not afford to pay only to acquire the position to evaluate the opportunity of an appeal to the CAS.

50. The scope of the appeal filed by Manchester is limited to request the Sole Arbitrator to review only the amount of training compensation payable for the season of the Player's 16th birthday. The Appellant is requesting the Sole Arbitrator to correct only one mistake in the Decision (in the interest of Manchester) but to overlook the several other mistakes made by the DRC. Upholding the approach of the appeal would allow Manchester to use the rules of CAS arbitration to request the CAS to misapply the law and the sporting rules at stake. Empoli considers that the CAS cannot misapply the FIFA Regulations by means of carefully crafted submissions or prayers for relief and thus, if the Sole Arbitrator considers that the appeal does not allow for a full scope review of the Appealed Decision, the Appeal must then be rejected

in full.

51. In the event that the Appeal is not rejected due to its limited scope, then it should be rejected due to its insufficient grounds. The Appellant is requesting the Sole Arbitrator to modify only half a sentence of the Appealed Decision *("29. As a result, the Chamber concluded that the total amount due by the Respondent to the Claimant as training compensation amounts to EUR 108.333,00* [sic] *which, with reference to art. 5 par. 4 of Annexe 4 of the Regulations, it did not find a disproportionate amount of compensation"),* that makes reference to the amount of training compensation, making no submission whatsoever with regard to the proportionality analysis of such compensation contained in the second part of the sentence. In order for the Appeal to be successful Manchester should have also demonstrated that the DRC erred in the analysis regarding the proportionality of the amount awarded or that changing the amount would not affect such analysis. Therefore, considering that the Appellant has made no submission regarding this aspect, the Appeal cannot be upheld. In any case, Empoli considers that even if Manchester would have made a submission on the question of proportionality, arguing that the amount of EUR 46,397 would be proportionate, it is completely without merit and thus Manchester's Appeal should fail.

52. In the event that the Sole Arbitrator decides to grant a *de novo* decision with a view to apply the FIFA Regulations correctly, the applicable rules to the present matter should be the 2009 edition of the FIFA Regulations and the training period of the Player should cover the entire seasons of the Player's 12th, 13th, 14th and 15th birthdays, as well as the period of 59 days during the seasons of the Player's 16th birthday, thus resulting in a total training compensation of EUR 357,123.28 (i.e. EUR 310,726.28 less EUR 46,397 already paid), plus the applicable interest as from the date on which the amount was due.

53. In conclusion, Empoli considers that the Sole Arbitrator should either reject the Appeal in full or issue a *de novo* decision applying the FIFA Regulations correctly to the case at stake.

III.4 CONSIDERATIONS AS TO THE MERITS

III.4.1 PRELIMINARY ISSUE: SCOPE OF THIS APPEAL

54. The first issue to be addressed by the Sole Arbitrator is whether all the petitions of the Respondent can be dealt with in the present proceedings or not, pursuant to Article R55 of the CAS Code. In this relation, the Sole Arbitrator wishes to emphasize that he is, regardless of the admissibility of the Appellant's letter of 8 April 2014 and the Respondent's reply to it on 10 April 2014 pursuant to Articles R55 and R56 of the CAS Code, well aware of the law associated to this question following the legal principle of *iura novit curia*.

55. After having studied in depth the answer to the appeal filed by the Respondent, and taking into account the scope of the present appeal, the Sole Arbitrator considers that the submissions filed by Empoli indeed exceed the content that according to Article R55 of the CAS Code any answer to an appeal should have. In particular, some of the petitions submitted by the Respondent cannot be considered as mere statements of defence, but as a counterclaim against the Appealed

Decision.

56. From the amendment of January 2010 of Article R55 of the CAS Code, CAS jurisprudence (e.g. CAS 2010/A/2035, TAS 2010/A/2101, CAS 2010/A/2108, CAS 2010/A/2193, or CAS 2012/A/2707) has declared that the new wording of the aforesaid Article determines that it is no longer possible to file a counterclaim within an Appeal procedure to challenge a decision and thus the only way to do it is through an independent appeal to be filed in due time.

57. In CAS 2010/A/2193, par. 6.3, the Panel held in particular that *"It is however clear that the aim of the amendment of the Code in the 2010 edition, in respect of Art. R55, was to abolish the possibility to file a counterclaim. Art. R55 has been modified and the wording "Any counterclaim" has been withdrawn from para. 1 of the said Article. The fact that the 2010 edition of the Code do not literally stipulates that a counter appeal can no longer be submitted does not change the above mentioned conclusion. The possibility to submit a counter appeal within the framework of an already existing appeal is a procedural right which does not exists per se unless it is clearly granted under the Regulations or the Code governing the proceedings. Therefore, the amendment of the Code, by abolishing the previous existing possibility to submit a counterclaim, was enough in order to bring about the result embodied in the abovementioned intention, i.e. that under the 2010 edition of the Code it is not any longer possible to submit a counterclaim at the late stage of the filing of the Answer to the Appeal"*. This CAS Jurisprudence has also been ratified by the Swiss Federal Tribunal in its decision of 10 December 2010 (ATF 4A_10/2010).

58. In order to determine whether a submission filed within an answer to the appeal could be deemed as a counterclaim, it could be useful to consider that *"The strict legal import of a "counterclaim" requires that it must have the effect of prejudicing the position of the party against whom it has been raised[1]"* and not to merely defend the validity of the Appealed Decision.

59. In the case at stake it seems clear to the Sole Arbitrator that the submissions filed by the Respondent asking the CAS to establish that the amount payable by Manchester to Empoli as training compensation for the Player, i.e. EUR 357,123.28 plus the interests (5% p.a.), go beyond a mere statement of defence and that, in case of being upheld, it has the effect of prejudicing the position of the Appellant. On that basis, the Sole Arbitrator deems the Respondent's prayers of relief other than those requesting to reject the Appeal are indeed counterclaims, which should have been raised in a separate appeal, and declares them inadmissible, pursuant to Article R49 and R55 of the CAS Code.

With regard to Empoli's reference to Article R57 of the CAS Code as a basis for the admissibility of its pleas, the Sole Arbitrator shall remark that it is true that, under the referred Article, *"The Panel has full power to review the facts and the law"* and that *"It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. However, such revision shall be made within the limits of the appeal brought by the Appellant.

The Sole Arbitrator is only competent to make the relevant revision within the limits established by the Appellant in its Statement of Appeal and its Appeal Brief, since the competence of this

[1] BOTICA SANTOS R., *CAS Proceedings in the Light of the Revised Code. A CAS Arbitrator's Perspective*, in RIGOZZI/BERNASCONI (Eds.), *CAS Jurisprudence and New Developments in International Sports Law*, Bern 2012.

Court only relates to the scope of the appeal as it has been configured by the Appellant. In other words, *"Art. R57 does not alter each CAS panel's obligation to render a decision that does not go "beyond the claims submitted to it" within the meaning of Art. 190(2)(c) PILS[2]".*

60. The Respondent somehow accepts the aforementioned position when it mentions in its answer to the Appeal (page 13) that if the Sole Arbitrator was to do a full scope review of the Appealed Decision on the basis of Article R57, *"The limited scope of the* [Appellant's] *submission could mean that an award modifying parts not appealed against by Manchester United is considered ultra or extra petita".*

61. For all these reasons the Sole Arbitrator deems that any petition brought by the Respondent different to those intended to reject the Appeal and confirm the Appealed Decision should be disregarded and hence, even in case the Appeal was to be rejected, the Sole Arbitrator cannot award to the Respondent anything that goes beyond the pronouncements of the Appealed Decision.

62. In conclusion, the scope of the present procedure shall be limited to determine whether the training compensation that the DRC awarded to Empoli corresponding to the season of the player's 16th birthday was correct or not, and if the Appellant was liable for any of the DRC's procedural costs.

III.4.2 THE TRAINING COMPENSATION WITH REGARD TO THE SEASON OF THE PLAYER'S 16TH BIRTHDAY

63. The Sole Arbitrator notes that (i) from the documentation existing in the file (the Player's Passport issued by the FIGC, the letter from the FIGC and the Player's statement), it appears that during the season 2008/2009, the Player was only registered with Empoli for 59 days, having been registered with Cuoiopelli the rest of the season, during the Loan Period (from 29 August 2008 until 30 June 2009) and (ii) none of the parties have contested the aforementioned situation.

64. The correspondence of FIFA dated 20 December 2013 tends to confirm the referred position. This letter, in the pertinent part, reads as follows: *"after a thorough examination of the appealed decision, we have noted that, due to an oversight of the FIFA administration, it appears that not all the pertinent information in relation to the player's registration details with Empoli FC S.p.A. have been properly submitted to the attention of the Dispute Resolution Chamber when passsing its decision on 28 June 2013. In particular, it appears that, regretfully, the information in relation to the period of time the player spent on loan with a third club has not been made available to the Chamber's attention. The foregoing observation could, potentially, be the reason why the Appellant is currently appealing the relevant decision".*

65. This being said, the Sole Arbitrator considers that the Appealed Decision incurred a substantive error when calculating the training compensation to which Empoli was entitled, because it did not take into account that between 29 August 2008 and 30 June 2009, the Player was registered

[2] RIGOZZI A., in ARROYO M. (Ed.), Arbitration in Switzerland - The Practitioner's Guide: Commentary, The Hague, 2013, pg. 1037.

with (and trained by) Cuoiopelli and not by the Respondent.

66. For this reason, the Sole Arbitration considers that the calculation of the training compensation made by the DRC for the season of the Player's 16th birthday (Section II, Paragraphs 26 and 27 of the grounds of the Appealed Decision) amounting to EUR 75,000 was mistaken, and that, as the Respondent recognizes in its answer to the Appeal, the amount to which Empoli was entitled for that season actually amounted to EUR 12,123.28 (i.e. 59 days), which Manchester has already paid to the Respondent.

67. On the basis of the foregoing, the Sole Arbitrator considers that the Appeal shall be fully upheld and thus the Appealed Decision shall be partially reversed, declaring that the amount to which Empoli was entitled for the season of the Player's 16th birthday actually amounted to EUR 12,123.28.

68. With regard to the arguments raised by the Respondent concerning the proportionality of the training compensation awarded, the Sole Arbitrator considers that the training compensation is not to be deemed as disproportionate in the terms envisaged by Article 5.4 of the Annexe 4 of the FIFA Regulations and that, on the contrary, it is fully in accordance with the FIFA Regulations. In any case, the Respondent has neither justified nor accredited the reasons or circumstances according to which the Sole Arbitrator would have to apply this exception and review the amount of the training compensation payable, that it is not considered disproportionate to the case under review pursuant to Article 5.4 of the Annexe 4 of the FIFA Regulations. Therefore, the Respondent's pleas on the proportionality of training compensation are to be dismissed.

69. For the same reason the Sole Arbitrator considers that, since Manchester had fulfilled, even before the proceedings before FIFA started, its obligation towards Empoli regarding payment of outstanding training compensation for the Player, it shall not have been liable for any of the procedural costs derived from the proceedings held before the DRC (file No. 12-02647/led), and, therefore, overturns this finding of the Appealed Decision (Paragraph 5.1 of the Appealed Decision). As a consequence, taking into account that the contribution of costs imposed on Empoli by the DRC did not have any effect because the Respondent never asked for the grounds of the Appealed Decision (Article 18.3 of the Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber), the declaration on the costs included in section 5 of the Appealed Decision is annulled. Therefore, for the sake of clarity, none of the parties shall pay any cost in connection with the proceedings held before the DRC.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Manchester United FC against the Decision of the FIFA Dispute Resolution Chamber dated 28 June 2013 is upheld.

2. The counterclaims filed by Empoli F.C. S.p.A. in its Answer are not admissible.

3. The Decision passed on 28 June 2013 by the FIFA Dispute Resolution Chamber is amended as follows:

   2. Manchester United FC has to pay to Empoli F.C. S.p.A., within 30 days as from the date of notification of this decision, the amount of EUR 12,123.28 plus interest of 5% p.a. on said amount as from 13 November 2009 until the date of effective payment.

   5.1 [cancelled].

   The other items of the FIFA decision are confirmed.

4. Manchester United has already fulfilled its obligations to pay training compensation to Empoli F.C. S.p.A. with respect to the player A.

(…)

7. All other motions and/or prayers for relief are rejected.