Arbitration CAS 2012/A/2919 FC Seoul v. Newcastle Jets FC, award of 24 September 2013

Panel: Mr Efraim Barak (Israel), Sole arbitrator

Football
Training compensation
CAS jurisdiction
Interruption of a limitation period
Standing to be sued of a club under the management and operation of a new licensee

1. **If an appeal is lodged against a final decision passed by one of FIFA's legal bodies against the entity which was a party to the proceedings at FIFA, CAS has jurisdiction to hear and decide the case. Whether or not the entity is the correct one and has indeed standing to be sued is to be adjudicated with the merits of the case.**

2. **In principle, subsidiary applicable Swiss law does not supersede or supplant all aspects of the regulations of FIFA. With respect to the limitation period of two years set out in article 25(5) of the FIFA Regulations, there is no provision providing for the consequences of a possible amicable agreement between parties to postpone the due date for payment of certain amounts. There is also no provision providing for the possible interruption of the prescription period or a provision specifically determining that the limitation period of two years can under no circumstances be interrupted. In this regard, where the FIFA Regulations contain a *lacuna*, or at least an ambiguity, in the spirit of good relations that should be encouraged in the world of sport, it must be possible for a limitation period to be interrupted in case the parties have mutually agreed on a new payment schedule, especially if the debtor asked for it and the creditor in *bona fide* relies on such new payment schedule.**

3. **Although acknowledging the CAS panel discretion in ruling *de novo*, in view of CAS jurisprudence, it is appropriate to respect FIFA's autonomy in connection with the standing to be sued issue, especially where a case deserves to be examined and decided first by the worldwide governing body of football in order for FIFA to be able to take a decision on such a fundamental question which could have worldwide implications for national football federations using a licensing system similar to the system used by a particular national federation. Therefore, the issue of standing to be sued and the liability of a club, under the management and operation of a new licensee towards another club will be referred back to the FIFA DRC to decide.**

I. PARTIES

1. FC Seoul (hereinafter: the "Appellant") is a football club with its registered office in Seoul, Republic of Korea. FC Seoul is registered with the Korea Football Association (hereinafter: the "KFA"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA").

2. Newcastle Jets FC (hereinafter: "Newcastle Jets" or the "Respondent") is a football club with its registered office in Newcastle, Australia. Newcastle Jets is registered with the Football Federation Australia (hereinafter: the "FFA"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of these appeal arbitration proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. On 28 February 2003, J. (hereinafter: the "Player"), a professional football player of Korean nationality born in 1987, was registered with FC Seoul as a professional football player.

5. On 1 February 2008, the KFA issued the International Transfer Certificate (hereinafter: the "ITC") of the Player in favour of Newcastle Jets. It is however uncertain on which date the Player was officially registered with the FFA. As the parties did not make reference to a transfer agreement in respect of this transfer, it is assumed that the Player transferred to Newcastle Jets as a free agent.

6. On 19 November 2008, Mr Oung Soo Han, vice-president of FC Seoul, issued a letter to Mr John Tsatsimas, former CEO of Newcastle Jets, pointing out that *"we FC Seoul are entitled to receive training compensation paid to the player's training club(s) as stipulated in the FIFA Regulations. (…) Please be noted that the training compensation paid to us FC Seoul is the amount of USD 200,000 (two hundred thousand US dollars / USD 40,000 x 5 seasons) (…)".*

7. In the absence of payment or an answer from Newcastle Jets to the above-mentioned letter, on 2 March and 11 May 2009, the Appellant sent two reminders to Newcastle Jets.

8. On 18 June 2009, Mr John Tsatsimas, on behalf of Newcastle Jets, sent a letter to FC Seoul with the following content:

"We refer to the [Player] and to previous communications and undertake that the training compensation amount will be paid to you no later than 18 December 2009. We apologise for the delay however are experiencing

financial issues at the current time and are unable to meet the obligation. Rest assured we have every intention of paying the correct training compensation amount at this time. (…)".

9. On 2 July 2009, Mr Oung Soo Han confirmed on behalf of FC Seoul that:

"(…) We would like to take this opportunity of expressing our gratitude for your confirmation of the payment schedule. Please be kindly informed of the below mentioned payment with regard to the compensation, which will be paid to us no later than 18 December 2009, which was officially confirmed on your latest fax dated 18 June 2009. (…)".

10. On 20 November 2009, Mr Michael W. Kang, Director/Football Assistance Team of FC Seoul, reminded Newcastle Jets of the deadline of 18 December 2009 *"which was officially confirmed on your fax (See the Attached Document) dated 18 June 2009".*

11. On 18 December 2009, the KFA sent a letter to the FFA urging *"Newcastle Jets FC to pay the relevant training compensation as it has mentioned in the letter dated 18 June that the amount will be paid to FC Seoul no later than 18 December 2009, today".*

B. Proceedings before the FIFA Dispute Resolution Chamber

12. On 30 March 2010, FC Seoul submitted a claim with the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC"), with a carbon copy (cc) to the FFA, claiming training compensation from Newcastle Jets in connection with the transfer of the Player from FC Seoul to Newcastle Jets in an amount of USD 200,000.

13. On 5 May 2010, FIFA acknowledged receipt of FC Seoul's claim and informed it as follows:

"(…) [W]e kindly refer to art. 25 par. 5 of the Regulations for the Status and Transfer of Players (edition 2005) which stipulates that the [FIFA DRC] does not hear any case subject to these Regulations if more than two years have elapsed since the event giving rise to the dispute.

In view of the above, and taking into account that the claim was received on 30 May 2010, we regret having to inform you that the claim cannot be considered by the [FIFA DRC] due to prescription.

Please take note that this information is of a general nature and is only based on the indications we currently have at our disposal. Therefore, it is without prejudice to any decision that our competent bodies may be called to pass in this or a similar affair".

14. On 13 May 2010, FC Seoul responded as follows to FIFA's letter:

"FC Seoul had been informed from the opposing club, Newcastle Jets FC of the payment deadline for its player's relevant training compensation and had spent a year waiting for the team to meet its proposed deadline which has been unanswered to this date.

In this respect, our club would like to sincerely ask you to review the club's case once again and consider its chance to be submitted to DRC for further action. All FC Seoul did was working on solving the matter in an amicable

way by respecting the Australian team's words in the first place therefore, the elapsed 2 years of time since the case giving rise to the dispute we believe, should be counted from the deadline given by Newcastle Jets FC".

15. On 26 April 2012, the FIFA DRC issued its decision (hereinafter: the "Appealed Decision") deciding that the claim filed by FC Seoul was inadmissible.

16. On 17 August 2012, upon the request of FC Seoul, the FIFA DRC communicated the grounds of the Appealed Decision to the parties. The Appealed Decision determined, *inter alia*, the following:

"(…) the Chamber acknowledged that in this specific matter the exact date of the player's registration by the FFA with its affiliate could not be established. However, the Chamber underlined that the player's passport at disposal issued by the KFA was a valid, official and sufficient document to take into account and that based on it, the player was transferred on 1 February 2008.

In continuation, the Chamber analyzed the reasons invoked by ["FC Seoul"] and stated that circumstances such as: negotiations in order to settle a matter amicably and/or proposals were not legal acts with the power to interrupt prescription.

In view of all the above, the members of the Chamber came to the conclusion that the deadline for the payment of the relevant training compensation was thirty days after 1 February 2008, at the latest, at the beginning of March 2008, reason for which the Claimant's claim amounting to USD 200,000 must be declared barred by the statute of limitations in application of art. 25 par. 5 of the Regulations, since the present claim was lodged on 30 March 2010 only, thus outside the time limit of 2 years, which elapsed at the beginning of March 2010 at the latest".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 6 September 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter: "CAS"). The Appellant emphasised that the statement of appeal was to be considered as its appeal brief. The Appellant challenged the Appealed Decision issued by the FIFA DRC on 26 April 2012, submitting the following requests for relief:

"For the foregoing reasons, Appellant respectfully requests this Court to issue a peremptory reversal of the DRC's decision and to order the Respondent immediate payment of USD 200,000 to the Appellant, together with an interest at the legal rate of interest set by statute if applicable, or at such rate as this Court may determine to be just and equitable, and such further and/or other reliefs as this Court deems fit".

18. On 10 September 2012, FC Seoul requested the appointment of a Sole Arbitrator.

19. On the same date, the CAS Court Office invited the Respondent to express its position on the Appellant's request to have the matter submitted to a Sole Arbitrator and that the Respondent's silence would be considered as an agreement thereto.

20. On 24 September 2012, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.

21. On 25 September 2012, in the absence of an objection of the Respondent, the CAS Court Office confirmed that the President of the CAS Appeals Arbitration Division, or his Deputy, would appoint a Sole Arbitrator.

22. On 28 September 2012, the Respondent filed its answer, whereby it requested CAS to decide the following:

"37. For the reasons set out above, the Appeal against the New Club must fail.

38. In any event, the Appellant's claim is inadmissible as the FIFA DRC correctly held that:

(a) in cases of Training Compensation, the relevant event is the registration of the player with his new club and the deadline for payment is 30 days after such registration;

(b) this failure of the Old Club to fulfil their obligations to pay the requisite amount of Training Compensation by 2 March 2008 was the event giving rise to the dispute.

(c) the Appellant's claim was barred pursuant to Article 25, Paragraph 5 of the FIFA Regulation given that the claim was lodged more than two (2) years since the events giving rise to the dispute".

23. On 12 November 2012, pursuant to Article R54 of the Code of Sports-related Arbitration (hereinafter: the "CAS Code"), and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the Sole Arbitrator appointed to decide the present matter was:

Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as Sole Arbitrator

24. On 11 December 2012, further to a request of the Sole Arbitrator pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to this matter.

25. On 7 January 2013, on behalf of the Sole Arbitrator, the CAS Court Office sent a letter to the FFA, informing it of the appeal filed by FC Seoul and the answer filed by Newcastle Jets. In light of the content of Newcastle Jets' answer, the FFA was informed that the Sole Arbitrator would appreciate it if the FFA could notify the CAS Court Office of the right address of "Newcastle Jets". Furthermore, the FFA was requested to provide any possible information, in the public domain, on the question whether, as a matter of fact, indeed there is an "old" Newcastle Jets and a "new" one. If indeed there are two different entities (although the name of the club is the same), the Sole Arbitrator would like to know about the legal status of the "old" club or if it is a case of changing owners or management. Finally, the Sole Arbitrator informed the FFA that he would be grateful for any information in respect of the liabilities of "old" clubs in case of ownership or management changes concerning football clubs in Australia, particularly concerning Newcastle Jets if indeed such change occurred, especially if there are any requirements under the Statutes or the Regulations of the FFA or the league.

26. On 15 January 2013, the FFA filed its response to the questions raised in the correspondence of the CAS Court Office dated 7 January 2013. In this letter the FFA provided, *inter alia*, the following information:

- From August 2004 until September 2010, the FFA permitted an entity known as Newcastle Soccer Pty Ltd (ACN 094 616 770) (Old Club) to operate a football team in the A-League competition. This licence was terminated in September 2010.
- On or around 10 October 2010, the FFA granted Newcastle Jets Operations Pty Ltd (ACN 146 450 535) (New Club) a licence to operate a football team in the A-League.
- Company extracts of the Old Club and the New Club from the Australian Securities and Investments Commission (hereinafter: "ASIC") were enclosed. According to the FFA no relationship exists between the Old Club and the New Club.
- In respect of the right address of Newcastle Jets, the FFA informed CAS that the name "Newcastle Jets" is simply part of the brand owned by the FFA that was previously licensed to the Old Club and is now licensed to the New Club. Of course, unlike a company, a brand does not have a separate legal personality and therefore cannot carry, or be attributed with, financial liabilities. Furthermore, the FFA emphasised that the New Club could have elected to develop a new brand and the name of the team than the "Newcastle Jets" brand, if such new name and branding was acceptable to the FFA.
- Consequently, the FFA is of the opinion that the Old Club is the appropriate respondent in this matter as the New Club was not in any way associated with the A-League or the sport of football at the relevant time and provided CAS with the registered address.
- The FFA confirmed that the Appealed Decision was communicated to the address of the New Club and that this address also appears on the website of the FFA and the New Club as it is the entity registered with, and licensed by, the FFA. Allegedly, after having received such correspondence from FIFA, the New Club informed FIFA that it was not the proper recipient of the correspondence.
- Finally, the FFA provided a copy of a decision of the FFA National Dispute Resolution Chamber (hereinafter: the "FFA NDRC") in respect of two matters that involved the change of ownership of two football clubs in Australia.

27. On 28 February 2013, on behalf of the Sole Arbitrator, the CAS Court Office provided FIFA with the Respondent's answer, the Sole Arbitrator's questions to the FFA and the answer of the FFA regarding the change of ownership of Newcastle Jets and invited it to submit its position in this respect.

28. On 26 March 2013, on behalf of the Sole Arbitrator, the CAS Court Office requested the FFA to provide the following information:

a) "the internal regulations of the FFA which govern the entire system of licensing, especially the parts that govern the procedure or requesting, granting and getting a License in order to play in the Australian A-League.

b) a comparison between the following elements referred to Newcastle Jets (the "Club") under the two different licensees:

- *the official name of the Club within the A-League before and after the change of administration;*
- *the name of the Club as used by the supporters, the media, etc.;*
- *the name of the home stadium under both regimes;*
- *the address of the Club under both regimes (not of the companies' nor the licensees' addresses);*
- *photos of the uniform before and after the change of the licensees;*
- *a picture of the logo of the Club before and after the change of licensees;*
- *a list of the players registered with the Club the last season under the previous licensees and the list of the players for the first season after the change of the licensees. This list should include the coach; and*
- *the record of titles (if any) of the Club as registered in the FFA (championships, cups, etc.)".*

29. On 29 April 2013, Mr Sam Chadwick, on behalf of the FFA, submitted an answer to the Sole Arbitrator's questions. In respect of the Sole Arbitrator's question regarding the licensing system of the Australian A-League, the FFA submitted the following:

"I confirm that [FFA] permits certain legal entities to operate a football team in the Hyundai A-League competition pursuant to a Club Participation Agreement (a template Club Participation Agreement is annexed as Annexure A). The licences are purely contractual in nature and as part of the licence, the licensee is granted the right to use the club name(s), colours trademarks and branding owned by FFA. FFA grants such licenses to certain legal entities in its absolute discretion after undertaking a satisfactory level of due diligence. Accordingly, the regulations and licensing of requesting, granting and obtaining a licence to operate a team in the A-League is governed by Australian law. The licenses granted by FFA under the Club Participation Agreement relate to specific geographical territories which are determined by FFA. The number of territories is limited to 10. The territory of the club in question is "Northern New South Wales including Newcastle and the Hunter District". This is the sole license in this territory".

(…)

In this regard, the entity Newcastle Soccer Pty Ltd (ACN 094 616 770) (Old Club) was granted a licence to participate in the Hyundai A-League competition. The founding principal and investor of the Old Club was Con Constantine. Mr. Constantine's businesses predominantly operated in retail and property development industry, which was significantly impacted by the Global Financial Crisis. Accordingly, the Old Club was subsequently placed into administration (bankruptcy) and, as outlined in our letter dated 15 March 2013, the Old Club's A-League licence was terminated in September 2010. Subsequently, on or around 10 October 2010, FFA granted Newcastle Jets Football Operations Pty Ltd (ACN 146 450 535) (New Club) a licence to operate a football team in the A-League, including the right to use the "Newcastle United Jets" and "Newcastle Jets FC" name, colours trademarks and branding owned by FFA. The founding principal and investor of the New Club is Nathan Tinkler. The New Club has no relationship to the Old Club and, furthermore, the New Club was not in any way associated with the A-League or the sport of football at all relevant times regarding this matter".

In respect of the Sole Arbitrator's specific questions regarding the differences between the Old Club and the New Club, the FFA confirmed that:

"1. The official name of the Old Club is "Newcastle Soccer Pty Ltd" and the official name of the New Club is "Newcastle Jets Football Operations Pty Ltd". As outlined in our letter dated 15 January 2013:

a. the name "Newcastle Jets FC" is simply part of the brand owned by FFA that was previously licensed to the Old Club and is now licensed to the New Club in order to operate a football team in Australia;

b. the New Club did not exist prior to 21 September 2010;

c. the New Club is a separate legal entity from Old Club and that the companies have no shareholders (owners) or directors (management) in common; and

d. thus, New Club has no relationship to Old Club

2. The name of the club as used by supporters and the media is "Newcastle United Jets" and "Newcastle Jets FC".

3. The name of the home stadium used by both the Old Club and the New Club is "Hunter Stadium" (Turton Road, Broadmeadow NSW 2292). Both the Old Club and the New Club played/ play at Hunter Stadium pursuant to separate venue hire agreements as it is the only stadium in Newcastle (and the territory covered by the licence) that is approved by FFA as a suitable stadium for holding A-League games. I also note that sporting stadiums in Australia are predominantly multi-purpose and are not usually designated to one "club" or sport. It is therefore very common for multiple professional sporting teams to share venues. For example, a rugby league club known as the "Newcastle Knights" also uses Hunter Stadium as its home stadium and two separate Hyundai A-League clubs based in Melbourne share the same venue, AAMI Park.

4. The registered business address of:

a. the Old Club is Level 1, 854 Hunter Street, Newcastle NSW 2300; and

b. the New Club is C8, The Boardwalk, 1 Honeysuckle Drive, Newcastle NSW 2300.

5. Enclosed as Annexure B are photos of the different player uniforms worn by the Old Club and the New Club.

6. Enclosed as Annexure C are logos of the Old Club and the New Club. These logos are identical as they are owned by FFA and only used under licence by the Old Club and the New Club.

7. Enclosed as Annexure D is a list of players registered with the Old Club for its last season in 2009/2010 and a list of players registered with the New Club for its first season in 2010/2011.

8. The Old Club won the Hyundai A-League Championship in 2007/2008. The New Club has not won any championships or cups since its formation in late 2010".

30. On 28 May 2013, the CAS Court Office informed the parties that, notwithstanding the absence of any answer from FIFA to his request for information, the Sole Arbitrator had decided to proceed. In light of the information provided by the FFA, the parties were granted a deadline to file comments in this respect.

31. On 11 June 2013, the Respondent informed CAS that it agreed with the information and position put forward by the FFA on 15 January and 29 April 2013. The Respondent further requested a hearing to be held. However, indicating that *"[n]oting that the parties and the Sole*

Arbitrator are located in various time zones, it is our preference for such a hearing to [sic] *held be telephone or videoconference at a mutually convenient time".*

32. On 17 June 2013, the Appellant requested the CAS Court Office *"to clarify succession of liabilities between Newcastle Soccer Pty Ltd and Newcastle Jets Football Operations Pty Ltd in relation to this matter".* The Appellant confirmed the CAS Court Office of its preference for the Sole Arbitrator to issue an award based on the parties' written submissions. However, in case *"it is possible for hearing to be convened by way of a conference call as the Appellant* [sic] *proposed, Please be informed that we accept the suggestion of the Appellant* [sic]*".*

33. On 19 June 2013, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing. However, *"considering the issues raised in the written submissions, the Sole Arbitrator is of the opinion that such hearing should be held in person and not by tele- or video-conference".* Consequently, the Sole Arbitrator decided that a hearing would be held in person at the CAS Alternative Hearing Centre in Shanghai, China.

34. On 1 July 2013, the Appellant returned a duly signed copy of the Order of Procedure.

35. On 19 July 2013, the Respondent informed the CAS Court Office that *"[g]iven that our client is not the proper respondent to the appeal it is not able to execute the Order of Procedure. However, as the arbitrator has scheduled a hearing despite the submissions that our client has made that it is not the proper respondent to the appeal, we have been instructed to attend the hearing to protect its interests".*

36. On 12 August 2013, a hearing was held at the CAS Alternative Hearing Centre in Shanghai, China. At the outset of the hearing, the parties confirmed that they did not have any objection as to the appointment of the Sole Arbitrator.

37. In addition to the Sole Arbitrator, Mr William Sternheimer, Managing Counsel & Head of Arbitration to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

    a) For FC Seoul:
        1) Ms Oh Yoon-Ji, Counsel
        2) Mr Yu Sung-Han, Manager of football assistance team, FC Seoul

    b) For Newcastle Jets:
        1) Mr Tony O'Reilly, Counsel

38. No witnesses or experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

39. Before the hearing was concluded, both parties expressly confirmed that they did not have any objection with the procedure and that their right to be heard had been respected.

40. The Sole Arbitrator confirms that he carefully heard and took into account all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

41. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Sole Arbitrator has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.

42. The submissions of FC Seoul, in essence, may be summarised as follows:

- FC Seoul is of the opinion that the FIFA DRC erred in determining that Newcastle Jets' proposal for a new payment schedule in its letter dated 18 June 2009 and FC Seoul's acceptance thereof dated 2 July 2009 were mere negotiations and did not constitute legal acts.
- FC Seoul maintains that CAS must give attention to the fact that it negotiated in good faith with Newcastle Jets for a timely payment of the training compensation, taking into consideration the difficult financial situation of the latter.
- According to FC Seoul, under the general principle of contract law, the exchange of the two above-mentioned letters is a new agreement between the parties to postpone the due date for the payment of training compensation.
- Even if the above were not accepted, failure to consider such exchange of correspondence as an event giving rise to the interruption of the limitation period would be in violation of Swiss law and render the proceedings fundamentally unfair.
- Pursuant to article 135(1) of the Swiss Code of Obligations, FC Seoul finds that the acknowledgement of Newcastle Jets of its debt towards FC Seoul is a ground for interruption of the two-year prescription. Consequently, a new limitation period commenced as of the date of the interruption according to article 137 of the Swiss Code of Obligations on 18 June 2009 and that it had until 18 June 2011 to bring its case before the FIFA DRC.

43. The submissions of Newcastle Jets, in essence, may be summarised as follows:

- Newcastle Jets is of the opinion that the appeal was incorrectly filed and served on the New Club and should have been filed with the Old Club, under the conduct of the previous licensee (Newcastle Soccer Pty Ltd (ACN 094 616 770), as this was the legal entity that conducted "Newcastle Jets FC" at the date of the Player's registration. The New Club, under the conduct of the new licensee (Newcastle Jets Football Operations Pty Ltd (ACN 146 450 535), did not have any involvement with "Newcastle Jets FC" until 21 September 2010 and does not have any liability towards FC Seoul and, to the extent that the appeal is pursued against the New Club, it must fail.
- *"In the event that the Panel is not persuaded by the principle submission outlined above, the Old Club submits the following in the alternative"*. The relevant event giving rise to the dispute is the registration of the Player with Newcastle Jets and the deadline for payment is 30 days

after such registration. In the present case, the 30-day deadline expired on 2 March 2008 and pursuant to article 25 (5) of the FIFA Procedural Rules the claim was filed out of time.

- Newcastle Jets maintains that Swiss law can only be applied in circumstances where there is a conflict, lacuna or ambiguity in the interpretation or application of a particular article of the FIFA regulations such that Swiss law is applied to the extent necessary. Swiss law does not supersede or supplant the clear regulations of FIFA. If this were so, then Swiss law would supplant all aspects of the regulations of FIFA and the regulations would be irrelevant. Moreover, Newcastle Jets deems the explanation of the Commentary to the FIFA Regulations about article 25(5) of the FIFA Regulations straightforward and analogous. Finally, Newcastle Jets argues that the limitation period in Swiss law is *"generally a 10 year period pursuant to Article 127 of the* [Swiss Civil Code] *(or five years in some cases, Article 128); it is not the limitation period the subject of the contract between the parties"*.

V. ADMISSIBILITY

44. The appeal was filed within the deadline of 21 days set by article 67(1) of the FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

45. It follows that the appeal is admissible.

VI. JURISDICTION

46. By letter dated 19 July 2013, Counsel for the Respondent informed CAS that he would appear at the hearing, but that this *"appearance is however without prejudice to the objection of our client to the jurisdiction of the arbitrator. As was pointed out in the written submissions filed by our client it is not the proper respondent to the appeal filed by the Appellant"*.

47. The Sole Arbitrator noted that the Respondent, presenting itself as the New Club, objected to the jurisdiction of CAS, because it is of the opinion that the Appellant should have filed a claim against the Old Club instead of against the New Club.

48. The Sole Arbitrator understands this objection of Newcastle Jets to amount to an allegation that there is a lack of standing to be sued for the New Club. The Sole Arbitrator finds that arguments related to a lack of standing to be sued are related to the merits of the case and should be dealt with accordingly.

49. The jurisdiction of CAS derives from article 67(1) of the FIFA Statutes as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 of the CAS Code.

50. The Sole Arbitrator noted that, at no point in time, the Appellant was informed that a New Club apparently replaced the Old Club and that, in the opinion of such New Club, FC Seoul should pursue its claim solely against the Old Club. The FFA's allegation that the New Club had informed FIFA that it was not the proper recipient of the Appealed Decision was not corroborated by any documentary evidence. As such, in the absence of any proof to the contrary, it must be assumed that the Appellant in good faith lodged an appeal against "Newcastle Jets FC" without any further specification, as this was the only name which appears on the letterhead of the Respondent in its correspondence with the Appellant in respect of the matter at stake. It was the exact name of the entity against whom the proceedings at FIFA were initiated and handled. It was also the exact and only name of the Respondent in the Appealed Decision. Furthermore, at the moment on which the appeal to CAS was submitted, the Appellant could not reasonably have been aware of the possible bankruptcy or change of ownership of the Old Club. The jurisdiction of CAS derives from the fact that an appeal was lodged against a final decision passed by one of FIFA's legal bodies against the entity which was a party to the proceedings at FIFA. However, the standing to be sued of the Respondent, if indeed such allegation in the specific framework of the circumstances of this case may have any impact on the outcome of these proceedings, should be adjudicated together with the merits of the case below.

51. It follows that CAS has jurisdiction to hear and decide this case.

VII. APPLICABLE LAW

52. Article R58 of the CAS Code provides the following:

"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 challenged 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".

53. The Sole Arbitrator notes that article 66(2) of the FIFA Statutes reads as follows:

"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".

54. The parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law.

55. The Sole Arbitrator however notes that Newcastle Jets objects to the need to apply Swiss law in the present appeals arbitration proceedings as it is of the opinion there is no conflict, lacuna or ambiguity in the interpretation of the FIFA Regulations which would require the application of Swiss law.

56. The Sole Arbitrator is therefore satisfied to primarily apply the various regulations of FIFA and accepts the subsidiary application of Swiss law should the need arise to fill a possible gap in the

various regulations of FIFA and will consider the necessity thereto together with the merits of the case below.

VIII. MERITS

A. The Main Issues

57. In view of the above, the main issues to be resolved by the Sole Arbitrator are:

a) Did the FIFA DRC correctly consider the claim of FC Seoul inadmissible due to prescription?

b) Is the Appellant entitled to training compensation in respect of the transfer of the Player, and if yes, what is the amount of the training compensation to be paid?

c) Does Newcastle Jets FC, under the management and operation of Newcastle Jets Football Operations Pty Ltd (ACN 146 450 535), has standing to be sued and is it liable to the payment of the training compensation? This question is to be examined in light of the specific environment and structure of Australian football. Newcastle Jests FC is a football club, being the subject matter of a license granted by the FFA. In case where the FFA aborted the license of a previous entity which possessed the license when the facts giving rise to the claim occurred and the FFA subsequently granted the licence to a new entity, does the new licensee have standing to be sued when such change of license occurred at a moment when the case brought by the Appellant was already pending at FIFA?

a) Did the FIFA DRC correctly consider the claim of FC Seoul inadmissible due to prescription?

58. The Sole Arbitrator recalls that the FIFA DRC *"came to the conclusion that the deadline for the payment of the relevant training compensation was thirty days after 1 February 2008, at the latest, at the beginning of March 2008, reason for which the Claimant's claim amounting to USD 200,000 must be declared barred by the statute of limitations in application of art. 25 par. 5 of the Regulations, since the present claim was lodged on 30 March 2010 only, thus outside the time limit of 2 years, which elapsed at the beginning of March 2010 at the latest"*.

59. FC Seoul finds, with reference to article 135(1) of the Swiss Code of Obligations, that the acknowledgement of Newcastle Jets of its debt towards FC Seoul is a ground for interruption of the two-year prescription. Consequently, a new limitation period commenced as of the date of the interruption according to article 137 of the Swiss Civil Code on 18 June 2009 and that it had until 18 June 2011 to bring its case before the FIFA DRC.

60. However, according to Newcastle Jets, there are no grounds to rely on Swiss law since Swiss law can only be applied in circumstances where there is a conflict, lacuna or ambiguity in the interpretation or application of a particular article of the FIFA regulations such that Swiss law is applied to the extent necessary. Swiss law does not supersede or supplant the clear regulations of FIFA. If this were so, then Swiss law would supplant all aspects of the regulations of FIFA and the regulations would be irrelevant. Moreover, Newcastle Jets deems the explanation of the

Commentary to the FIFA Regulations about article 25(5) of the FIFA Regulations straightforward and analogous.

61. The Sole Arbitrator observes that article 25(5) of the FIFA Regulations on the Status and Transfer of Players (2009 edition) (hereinafter: the "FIFA Regulations") stipulates the following:

"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case".

62. Article 135 of the Swiss Code of Obligations determines the following:

"Die Verjährung wird unterbrochen:

1. durch Anerkennung der Forderung von seiten des Schuldners, namentlich auch durch Zins- und Abschlagszahlungen, Pfand- und Bürgschaftsbestellung;

2. durch Schuldbetreibung, durch Schlichtungsgesuch, durch Klage oder Einrede vor einem staatlichen Gericht oder einem Schiedsgericht sowie durch Eingabe im Konkurs".

Or, in an unofficial English translation:

"The limitation period is interrupted:

1. if the debtor acknowledges the claim and in particular if he makes interest payments or part payments, gives an item in pledge or provides surety;

2. by debt enforcement proceedings, an application for conciliation, submission of a statement of claim or defence to a court or arbitral tribunal, or a petition for bankruptcy".

63. Article 137(1) of the Swiss Code of Obligations reads:

"Mit der Unterbrechung beginnt die Verjährung von neuem".

Or, in an unofficial English translation:

"A new limitation period commences as of the date of the interruption".

64. The Sole Arbitrator observes that it remained undisputed between the parties that a certain Australian football club, called "Newcastle Jets FC", has a debt of USD 200,000 towards FC Seoul. In this respect, it is noteworthy that Newcastle Jets informed FC Seoul by letter dated 18 June 2009 that *"[w]e refer to the* [Player] *and to previous communications and undertake that the training compensation amount will be paid to you no later than 18 December 2009. We apologise for the delay however are experiencing financial issues at the current time and are unable to meet the obligation. Rest assured we have every intention of paying the correct training compensation amount at this time. (…)"*. Finally, also at the occasion of the hearing, it was expressly confirmed that the amount owed by Newcastle Jets to FC Seoul was not in dispute.

65. Consequently, the Sole Arbitrator is satisfied to accept that Newcastle Jets acknowledged its debt towards FC Seoul on 18 June 2009. It is undisputed that at the time of the admission, the club Newcastle Jets FC indeed existed and operated under a license granted by the FFA to a certain legal registered entity. Therefore, the Sole arbitrator is satisfied that on 18 June 2009, a valid admission by the debtor was made in respect of the debt, accompanied by a request for an extension of the deadline for payment. A request that was kindly and in the highest degree of *bona fide* accepted by the Appellant.

66. The question to be answered by the Sole Arbitrator is thus whether there is a *lacuna* or an ambiguity in the FIFA Regulations, in respect of such circumstances, that requires the subsidiary application of Swiss law.

67. The Sole Arbitrator finds that the FIFA Regulations contain a *lacuna*, or at least an ambiguity, as there is no provision providing for the consequences of a possible amicable agreement between parties to postpone the due date for payment of certain amounts. There is also no provision providing for the possible interruption of the prescription period or a provision specifically determining that the limitation period of two years set out in article 25(5) of the FIFA Regulations can under no circumstances be interrupted.

68. The Sole Arbitrator finds that under certain circumstances, unless clearly determined otherwise, the basic rule of Swiss law contemplated in article 135 of the Swiss Code of Obligations also is also applicable in relations between football clubs. In the spirit of good relations that should be encouraged in the world of sport, it must be possible for a limitation period to be interrupted in case the parties have mutually agreed on a new payment schedule, especially if the debtor asked for it and the creditor in *bona fide* relies on such new payment schedule. Determining otherwise would lead to a situation under which a debtor is free to conclude a new payment schedule with a creditor, but that the debtor would be free to dishonour such payment schedule without any material consequences since the debtor would on the one hand not be able to bring his case to FIFA, and on the other hand would be prevented from bringing his case to national courts since the FIFA Statutes so stipulate. In case a limitation period could not be interrupted, it would even be beneficial for a debtor not to comply with such new payment schedule, as the creditor is lead to believe that the debt will be paid, while in fact the new payment schedule could have been intended to gain time in order for a possible claim of the creditor to be time barred. This would induce debtors to conclude new payment schedules with creditors in bad faith and such situation is to be prevented in the eyes of the Sole Arbitrator.

69. Applying article 135 of the Swiss Code of Obligations to the matter at stake leads the Sole Arbitrator to the conclusion that the limitation period of article 25(5) of the FIFA Regulations was interrupted on 18 June 2009 and that, pursuant to article 137(1) of the Swiss Code of Obligations, a new limitation period commenced on the same date. As such, the claim of FC Seoul dated 30 March 2010 was filed within the two-year limitation period and as such should be deemed admissible.

70. Consequently, the Sole Arbitrator decides that the Appealed Decision shall be overturned and that FC Seoul was not time barred by article 25(5) of the FIFA Regulations.

b) Is the Appellant entitled to training compensation in respect of the transfer of the Player, and if yes, what is the amount of the training compensation to be paid?

71. The Sole Arbitrator is satisfied from the evidence on file that the entitlement of the Appellant to receive training compensation in respect of the transfer of the Player is not disputed, nor is the amount of training compensation and the agreed date on which, at the latest, this amount should have been paid by Newcastle Jets FC.

72. The Sole Arbitrator finds that the Appellant is entitled to receive as training compensation the amount of USD 200,000, plus interest in a yearly rate of 5% to be calculated as of 18 December 2009.

73. The above-mentioned finding leads the Sole Arbitrator to the last remaining question, which is the question of the standing to be sued and the liability of Newcastle Jets FC under the operation of the new licensee to pay the debt to the Appellant.

c) Does Newcastle Jets FC, under the management and operation of Newcastle Jets Football Operations Pty Ltd (ACN 146 450 535), has standing to be sued and is it liable to the payment of the training compensation?

74. The Sole Arbitrator observed that the FIFA DRC did not consider the objection of the Respondent, under the operation and management of the new licensee, to its standing to be sued as it decided that the claim of FC Seoul was time barred by the statute of limitation and was thus considered inadmissible. Furthermore, the decision of the FIFA DRC was rendered at a moment when no one, including the FFA, brought to the attention of FIFA that in the meantime the license to operate Newcastle Jets FC was transferred to another legal entity and to the fact that these circumstances may or may not have an impact on the question of the obligation of the club called Newcastle Jets FC to pay the debt to the Appellant.

75. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and he may issue a new decision that replaces the decision challenged. As such, the Sole Arbitrator is in no way restricted from taking a decision on the merits of the case.

76. The Sole Arbitrator is however of the opinion that the matter at stake is a fundamental issue on which FIFA did not yet provide its view. FIFA, although invited by the Sole Arbitrator to provide its position in this respect, failed to answer the questions posed by the Sole Arbitrator and the questions thus remained unanswered. The Sole Arbitrator finds that even if he may be sufficiently informed about the specificity of the licensing system of the FFA as a result of the questions he posed to the FFA, he is of the opinion that this issue should first be dealt with by FIFA in order for FIFA to be able to take a decision on such a fundamental question which could have worldwide implications for national football federations using a licensing system similar to the system used by the FFA. This opinion of the Sole Arbitrator was strengthened by the Respondent's request at the occasion of the hearing to have the matter referred back to

FIFA for its consideration in first instance should the Sole Arbitrator find that the Appellant's claim was not time barred.

77. The Sole Arbitrator observed that in a previous CAS proceeding, a CAS Panel in a matter concerning the calculation of compensation for breach of contract by a football player considered that *"because of its erroneous legal opinion the DRC did not make any comments on the amount of compensation payable nor did it see any reason to investigate the facts of the case. Since the application of the criteria stipulated in Art. 17 para. 1 of the FIFA Regulations 2005 allows a considerable leeway in the calculation of compensation, the Panel considers it appropriate to respect FIFA's autonomy in this regard and to refer the dispute back to the DRC to calculate the compensation due to the Respondent"* (CAS 2006/A/1100).

78. Although acknowledging his discretion in ruling *de novo*, the Sole Arbitrator, with reference to CAS 2006/A/1100, considers it appropriate to respect FIFA's autonomy in this regard, especially because the case at hand deserves to be examined and decided first by the worldwide governing body of football. Therefore, the issue of standing to be sued and the liability of Newcastle Jets, under the management and operation of the new licensee, towards FC Seoul, will be referred back to the FIFA DRC to decide.

d) Conclusion

79. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

a) The claim of FC Seoul was not time barred by the limitation period of article 25(5) of the FIFA Regulations; as such the FIFA DRC erroneously decided that FC Seoul's claim was inadmissible.

b) It is undisputed that the Australian football club named Newcastle Jets FC, has a debt of USD 200,000 towards FC Seoul and that this amount was due to be paid on 18 December 2009.

c) The issues related to the standing to be sued of Newcastle Jets FC (under the conduct of the new licensee) and its liability towards FC Seoul are referred back to FIFA for its consideration and decision in first instance.

d) All other requests or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Seoul on 6 September 2012 against the Decision issued on 26 April 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

2. The claim filed by FC Seoul with the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 30 March 2010 is admissible.

3. The Decision issued on 26 April 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is annulled and the case is remitted back to the Dispute Resolution Chamber of the Fédération Internationale de Football Association in order to decide the following question:

   Does Newcastle Jets FC, under the management and operation of Newcastle Jets Football Operations Pty Ltd (ACN 146 450 535), has standing to be sued in the proceedings in respect of the transfer of the player J. from FC Seoul to Newcastle Jets FC, and is it liable to pay the amount awarded under point 4 of this decision to FC Seoul?

4. FC Seoul is entitled to receive as training compensation the amount of USD 200,000, plus interest in a yearly rate of 5% to be calculated as of 18 December 2009. The enforcement of this entitlement will remain pending and subject to the rendering of a decision by the Dispute Resolution Chamber of the Fédération Internationale de Football Association in respect of point 3 above.

5. (…)

6. (…)

7. All further and other requests for relief are dismissed.