Arbitration CAS 2012/A/2890 FC Nitra v. FC Banik Ostrava, award of 26 April 2013

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Alasdair Bell (United Kingdom); Mr Cristian Jura (Romania)

Football
Training compensation
Conditions to receive training compensation for a transfer inside the territory of the EU/EEA
Entitlement to training compensation absent the offer to a contract
Level of justification

1. **The special provisions on training compensation for a transfer inside the territory of the EU/EEA intend to subject training compensation to some conditions. In order to claim training compensation, the training club must have offered a contract to the player; or alternatively, if a contract has not been offered, the training club must otherwise justify its entitlement to training compensation.**

2. **In order to justify entitlement to training compensation if a professional contract has not been offered, the training club should at least show a *bona fide* interest in retaining the services of the player for the future. At the same time, in order to encourage player training, compensation should be granted whenever it would appear contrary to common sense to conclude that the training club was not at all interested in keeping the player.**

3. **The question of how a club may justify entitlement to training compensation must not be approached in an overly restrictive manner. The provisions of the FIFA Regulations on the Status and Transfer of Players do not require that evidence be *"unambiguous"* or *"documentary"* to ground a claim. In that respect, the interpretative approach can follow that under Art. 8 of the Swiss Civil Code: in the event direct evidence cannot be offered, a judge can base his decision on inferences or on a high degree of likelihood; in addition, events whose existence must be presumed according to the normal course of things can be relied on as a basis for judgment, even if these events are not confirmed by evidence, at any rate if the opposing party does not allege or establish circumstances sufficient to put their existence in doubt.**

1. BACKGROUND

1.1 The Parties

1. FC Nitra (hereinafter referred to as "Nitra" or the "Appellant") is a Slovak football club, with seat in Nitra, Slovak Republic, affiliated to the Slovak Football Association, a member of the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").

2. FC Banik Ostrava (hereinafter referred to as "Banik" or the "Respondent") is a Czech football club, with seat in Ostrava, Czech Republic. Banik is affiliated to the Football Association of the Czech Republic, which is also a member of FIFA.

1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. J. (hereinafter also referred to as the "Player") is a football player born in 1991. The Player started to attend the training and vocational facilities offered by Nitra at the age of 6, and was registered with Nitra as an amateur player from the season 2002-2003 to the season 2008-2009 included.

5. In the month of June 2009, the Player took part in the pre-season training with the A-team of Nitra, participating in some friendly matches.

6. On 8 July 2009, the Slovak Football Association (hereinafter referred to as "SFA") was requested by the Football Association of the Czech Republic (hereinafter referred to as "FACR") to issue an International Transfer Certificate for the transfer of the Player to Banik.

7. On 15 July 2009, the Player was registered with the FACR as a player for Banik.

8. After an exchange of correspondence and negotiations between the parties, on 30 June 2011, Nitra lodged a claim with FIFA, requesting that Banik be ordered to pay an amount of EUR 220,000, plus interest, as training compensation for the Player under the applicable FIFA rules. Whilst Banik opposed this request it had first admitted, in a letter to FIFA dated 27 August 2011, that training compensation was due in respect of the Player for an amount of EUR 130,000 and that this sum had already been offered during negotiations. In its subsequent submission of 26 October 2011, Banik argued that the claim of Nitra should be entirely dismissed.

9. On 1 March 2012, the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") issued a decision (hereinafter referred to as the "Decision") holding that:

"1. The claim of the Claimant, FC Nitra, is dismissed".

10. More specifically, the DRC deemed that the 2009 edition of the Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP") was applicable to the substance of the matter, and on such basis held as follows:

"9. … referring to the rules applicable to training compensation, the Chamber stated that, as established in art. 1 par. 1 of Annexe 4 in combination with art. 2 par. 1 lit. i. of Annexe 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23rd birthday.

10. Moreover, the Chamber referred, in particular, to art. 6 of Annexe 4 of the Regulations, which contains special provisions regarding players moving from one association to another association inside the territory of the European Union (EU/European Economic Area (EEA).

11. In view of the above, the Chamber stated that it first had to verify whether art. 6 par. 3 of Annexe 4 of the Regulations applies in the present case as lex specialis, and, in the affirmative, to determine if the Claimant had complied with said provision in order to be entitled to receive training compensation from the Respondent.

12. As far as the applicability of art. 6 par. 3 of Annexe 4 of the Regulations is concerned, the Chamber stated that, as the player moved from Slovakia to Czech Republic, i.e. moved from one association to another association inside the territory of the EU, said article is applicable. Therefore, the Chamber concluded that the aforementioned provision applies in the case at hand as lex specialis.

13. In this context, the Chamber recalled that, in accordance with art. 6 par. 3 sent. 1 of Annexe 4 of the Regulations, if the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation.

14. At this stage of the considerations, the Chamber found it important to recall that in the decision rendered by the CAS in CAS 2006/A/1158 ADO Den Haag vs Newcastle United, the Panel considered that "if a club want to retain the right to training compensation in respect of one of its amateur players, it must "justify" it under Article 6 para. 3 by taking a proactive attitude vis-à-vis that individual player so as to clearly show that the club still counts on him for the future season(s). Accordingly, the training club must either offer the concerned player a professional contract or, short of that, it must show a bona fide and genuine interest in retaining him for the future. In other words, a training club not immediately offering a professional contract to one of its trainees can still justify its entitlement to training compensation if it proves that it desires to keep the player on the club's roster or in its youth academy, with a view to keeping alive the option of granting him a professional contract at a later stage".

15. With due consideration to the above, the DRC pointed out that, thus, it had to examine whether the Claimant had complied with art. 6 par. 3 of Annexe 4 of the Regulations, and, in this regard, examined all the documentation provided in the present matter as well as the arguments raised by both the Claimant and the Respondent.

16. *First of all, the Chamber observed that the Claimant argued that it had always considered the player as a great prospect for the future. In order to prove the aforesaid, the Claimant indicated that it had, on more than one occasion, offered a contract to the player, however, the player had decided not to accept such contract offers. Taking into account the aforementioned, the Chamber came, after a thorough examination of the documentation on file and in consideration of the particular circumstances surrounding the present matter, to the conclusion that it was not established to the satisfaction of the Chamber that the Claimant had in fact offered the player a contract. In this context, the Chamber stressed that the only document submitted for the consideration of the Chamber with regard to the offer of a new contract was a copy of one of the alleged employment contracts offered, i.e. no evidence whatsoever was made available to the Chamber which would indicate that the player had indeed received said contract offers.*

17. *As a consequence, whilst bearing in mind art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the Chamber concluded that, in the absence of any credible evidence to the contrary and taking into account the particularities of this case, the Claimant had not unequivocally proven that it had indeed offered the player a contract in accordance with art. 6 par. 3 of Annexe 4 of the Regulations.*

18. *Having established the above, the Chamber continued and analysed the statements of the Claimant in relation to the genuine interest it had allegedly shown to further retain the services of the player in its statement that it had always considered the player as a great prospect for the future. The Chamber understood that the Claimant asserted that, based on these statements, it could justify that it was anyway entitled to training compensation in accordance with art. 6 par. 3 sent. 1 in fine of Annexe 4 of the Regulations, which is, according to the well-established jurisprudence of the Chamber, limited to very exceptional circumstances.*

19. *In the framework of analyzing as to whether or not the Claimant could justify that it is entitled to training compensation, the Chamber noted that the Claimant indicated that the player had played for the u-15, u-16, u-17 and u-18 national teams of Slovakia, that the player had been given the opportunity to accustom to the level of the 1st team and that the player in the last 4 games of the 2008/2009 season. Furthermore, the Claimant indicated that, between March 2009 and May 2009, several negotiations took place between the player the club.*

20. *As to the negotiations that allegedly took place between March 2009 and May 2009, the Chamber noted that no documentary evidence had been provided by the Claimant which corroborated that indeed such negotiations had been taking place. The Chamber referred once more to art. 12 par. 3 of the Procedural Rules and considered that the statement in relation to the alleged negotiations could, in the absence of any convincing documentary evidence, not be considered as proof to unambiguously establish that the Claimant had shown a bona fide and genuine interest in retaining the player for the future.*

21. *Turning its attention to the statements in relation to the player's participation in the first team of the Claimant and the national youth teams of Slovakia, the Chamber recognized that this indeed may indicate that the player was considered as a talent by the Claimant, however, it does not, as such, prove that the Claimant had a bona fide and genuine interest in retaining the player for the future, i.e. it does not prove that the Claimant had a pro-active stance towards the player. In this context and in connection with the Claimant's argument that it would be "contra sensu" to suppose that the Claimant did not want to secure the services of the player, it seems to the Chamber that the Claimant is of the opinion that the mere and sole fact that a player is a talented player would release a club of its*

obligation to offer such player a contract, or alternatively, would release a club of showing its bona fide and genuine interest in retaining the player's services for the future. The Chamber concurred that such interpretation is manifestly incorrect as it is clearly incompatible with the ratio behind art. 6 para. 3 of Annexe 4 of the Regulations.

22. In light of the foregoing, the Chamber concluded that the Claimant had not been able to justify that it was entitled to training compensation in accordance with art. 6 par. 3 set. 1 in fine of Annexe 4 of the Regulation, and that, thus, the Claimant is not entitled to receive training compensation from the Respondent.

23. For the sake of completeness and as to the argument of the Claimant that the Respondent had already recognized that training compensation was due to the Claimant, the DRC emphasized that, inside the territory of the EU/EEA, the general rule is that an employment contract has to be offered to the player. The fact that the Respondent had recognized at a certain stage that the Claimant was entitled to training compensation does, in the Chamber's unanimous opinion, not annul the application of this fundamental principle contained in art. 6 of Annexe 4 of the Regulations.

24. Finally, in view of the above considerations, the members of the Chamber did not deem it necessary to enter into the substance of the other arguments raised by the parties to the present dispute, since the prerequisites in order for the Claimant to be entitled to training compensation were not complied with.

25. In view of all the above, the Chamber decided to reject the claim of the Claimant".

11. The Decision with the grounds supporting it was notified to the parties on 19 July 2012.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

12. On 7 August 2012, Nitra filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") to challenge the Decision. Pursuant to Article R48 of the Code of Sport-related Arbitration (hereinafter referred to as the "Code"), the Appellant named Banik and FIFA as respondents and designated Mr Alasdair Bell as an arbitrator.

13. On 14 August 2012, the Appellant filed its appeal brief in accordance with Article R51 of the Code, together with 11 exhibits. The appeal brief contained also the following evidentiary requests:

"… - To request FIFA DRC to disclose whole file of the proceeding before FIFA DRC to the CAS

… - To request FIFA DRC / Respondent / FARC to disclose the exact date of the signature of the professional contract between the Respondent and the Player and make public the kind of relationship between the parties from July 2009 until May 2010".

14. The statement of appeal and the appeal brief were forwarded by the CAS Court Office to Nitra and FIFA under cover letter dated 16 August 2012.

15. In a letter of 29 August 2012, FIFA, noting that it had been named a respondent in this arbitration, advised the CAS Court Office as follows:

"… the present procedure relates to a dispute between the club FC Nitra and the club FC Banik Ostrava in connection with the payment of training compensation with regard to the player J., and does not concern FIFA. In particular, we have to stress that FIFA, more precisely the Dispute Resolution Chamber, in the matter at stake, acted in his role as the competent deciding body of the first instance and was not a party to the dispute. Moreover, we would like to emphasise that the appealed decision of the Dispute Resolution Chamber dated 1 March 2012 is not one with any disciplinary nature. Finally, the appeal in question does not contain any substantial request against FIFA.

Therefore, we deem that FIFA cannot be considered as a Respondent in the present affair, and, in consequence, we request that FIFA shall be excluded from the procedure at stake. …".

16. In a letter of 3 September 2012, the Appellant informed the CAS Court Office of its decision *"to withdraw the appeal directed against FIFA in the present dispute"*.

17. On 20 September 2012, the CAS Court Office noted that the Respondent had failed to nominate an arbitrator within the prescribed deadline, and that, as a result, an arbitrator would be appointed by the President of the CAS Appeals Arbitration Division *in lieu* of the Respondent. At the same time, the CAS Court Office noted that the Respondent had not lodged an answer to the statement of appeal, and informed the parties that the arbitration would proceed pursuant to Article R55 of the Code.

18. On 21 November 2012, the Appellant filed some additional evidence, requesting the CAS to take it into account, *"notwithstanding the fact that the time limit to file an Appeal Brief elapsed"*, on the basis of exceptional circumstances.

19. By communication dated 23 November 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Alasdair Bell and Mr Cristian Jura, arbitrators.

20. In a letter of 10 January 2013, the CAS Court Office, writing on behalf of the Panel, informed the parties that the Panel had decided *inter alia* to dismiss the Appellant's request (mentioned at § 13 above) that the Respondent be invited to provide a copy of the professional contract signed by Player and an explanation of the nature of the relationship between July 2009 and May 2010, because *"the dispute relates to other issues (entitlement of the Appellant to claim the payment of training compensation and the category in which the Appellant must be classified for the purpose of the quantification of TC)"*. At the same time, the Respondent was invited to comment on the Appellant's request of 21 November 2012 to be authorized to file additional evidence.

21. In a letter dated 17 January 2013, the Respondent indicated that the filing by the Appellant of the additional evidence, submitted on 21 November 2012, could not be accepted.

22. On 30 January 2013, the CAS Court Office informed the parties that the Panel had decided to accept, pursuant to Article R56 of the Code, the evidence filed by the Appellant on 21

November 2012.

23. On 27 February 2013, FIFA filed with the CAS a copy of the entire case file, which had been requested by CAS' letters of 10 January 2013 and 6 February 2013.

24. On 11 March 2013, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the parties.

25. In a letter dated 13 March 2013, the Respondent requested that […], the father of the Player, be heard as a witness at the hearing, indicating that it had not been in a position to *"arrange for the witness earlier"*.

26. In a letter of 15 March 2013, the Appellant objected to the Respondent's request, asking the Panel to dismiss it, as such witness had not been indicated by the Respondent in the FIFA or in the CAS proceedings, and no *"exceptional circumstances"* existed to justify the late request.

27. On 15 March 2013, the Respondent submitted the witness statements signed by the Player, by his father and by I., requesting that their deposition be admitted in the proceedings, again indicating that it had not been in a position to *"arrange for these statements earlier"*.

28. On 15 March 2013, the CAS Court Office advised the parties that the Panel had noted that the witnesses named by the Respondent had not been indicated in any prior written submission in this arbitration, and that the Respondent had not specified any "exceptional circumstance" under Article R56 of the Code which had prevented it from indicating those witnesses within the deadline set by Article R55 of the Code. Therefore, the parties were informed that the Panel had decided to deny the Respondent's application and that the witness statements submitted would be disregarded.

29. On the same 15 March 2013, the Respondent insisted on its request, asking the Panel to reconsider its earlier decision not to admit the witness statements.

30. On 15 March 2013, the CAS Court Office informed the parties that the Panel had decided to maintain its decision and to reject the Respondent's request to hear its witnesses. In fact, the Panel came to the conclusion that the Respondent had not indicated any exceptional circumstances which prevented it from naming the witnesses within the time limit prescribed by Article R55 of the Code. Furthermore, the Panel reminded the Respondent that it had submitted a request to hear those witnesses only three days before the hearing.

31. A hearing was held on 18 March 2013 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 1 March 2013. The Panel was assisted at the hearing by Mr Fabien Cagneux, Counsel to the CAS. The following persons attended the hearing:

    i. for the Appellant: Mr Svetozar Pavlovic, counsel;

    ii. for the Respondent: Mr Petr Safarcik, Chairman of the Board, Mr Filip Jirousek, counsel, and Mr Petr Fousek, advisor.

32. At the hearing, the parties preliminarily made submissions on some evidentiary requests:

    i. the Appellant stated that the witnesses it had indicated in its written submissions and who had provided witness statements could not attend the hearing. However, the Appellant requested that the witness statements be taken into account as evidence by the Panel;

    ii. the Respondent insisted in its request that […], the father of the Player, be heard as a witness, and that the Panel take into consideration the witness statements provided on 15 March 2013.

33. After a short deliberation, the Panel informed the parties of the following:

    i. with regard to Appellant's request, the Panel noted that the witness statements had been filed in accordance with the provisions of the Code, together with the appeal brief (Article R51) or as additional evidence, which had been authorized by the Panel (pursuant to Article R55) in light of the explanations given and of the fact that the Respondent had not yet (at that time) submitted its answer. As a result, those statements were admissible. However, the probative value of those statements was limited, since their content was not confirmed at the hearing and the Respondent had not been given the opportunity to cross-examine the witnesses who had rendered them;

    ii. with regard to Respondent's request, the Panel confirmed the decision taken on 15 March 2013 not to admit a deposition requested, and the witness statements filed, only three days before the hearing, without indicating any "exceptional circumstances" which would justify their admission under Article R56 of the Code.

34. Subsequently, the parties made submissions in support of their respective cases. At the conclusion of the hearing, the Appellant confirmed that it had no objections in respect of its right to be heard and that it had been given the opportunity to fully present its case. The Respondent insisted that its request that [the father of the Player] be heard as a witness, and that the Panel take into consideration the witness statements provided on 15 March 2013, should have been admitted.

2.2 The Position of the Parties

35. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of the Appellant

36. The Appellant's prayers for relief, indicated in its appeal brief, are the following:

> *"1 - To accept the appeal filled by the Appellant and to annul appealed decision rendered by FIFA DRC on 1st March 2012.*
>
> *2 - Consider that all conditions arising out of the Regulations on the Status and Transfer of Players were fulfilled and therefore to condemn the Respondent to compensate the Appellant in the amount of EUR 220,000 (two hundred twenty thousand) as a Training Compensation obligation / or in the alternative to compensate the Appellant in the amount due according to the valid regulations and/or in the alternative*
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> *4* [sic!] - *Determine the imposition of an interest rate at 5% p.a. over the total amount due from the day on which the Training Compensation payment should have been effectively due and/or in the alternative*
>
> *5 - Determine that the Respondent shall bear all procedural cost including advance of costs and total costs of proceedings and/or in the alternative*
>
> *6 - To condemn the Respondent to the payment of legal expenses in favor of the Appellant incurred amounting to EUR 22,000 …".*

37. The Appellant, in other words, claims to be entitled to receive a payment from the Respondent as training compensation for the Player. Therefore, according to the Appellant, the Decision should be set aside and replaced by another, granting the payment claimed.

38. In order to support its claim to be entitled to training compensation, the Appellant refers to Article 20 RSTP and CAS jurisprudence (CAS 2006/A/1152 and CAS 2009/A/1757) to emphasize the general principle that training compensation has to be paid to the player's training club when the player signs his first professional contract and on each subsequent transfer up to the season of his 23rd birthday.

39. At the same time, the Appellant refers to Article 6.4 of Annexe 4 to the RSTP, applicable in the relations between two clubs (Nitra and Banik) belonging to two federations within the European Union, to underline that the training club is entitled to receive training compensation if it has offered the amateur player a professional contract, or, absent such offer, if it can justify to be entitled to said compensation.

40. Against this background, the Appellant indicates that:

i. the Player started his career at an early age with Nitra, and was trained, formed and educated exclusively by Nitra until the end of the season 2008/2009. i.e., the season of the Player's 18th birthday. In this period, he received football and schooling education;

ii. as a result of his successful training, the Player was selected for the U15, U16, U17 and U18 Slovak national teams;

iii. in the months of March, April, May and June 2009, the Player was moved to, and fielded with, the A-team of the Appellant, in order to prepare him for his career with Nitra for the upcoming seasons;

iv. between March and May 2009 several contacts took place between the Appellant and the Player with a view to the conclusion of a professional contract. In that regard, on 25 June 2009, at the beginning of the 2009/2010 season, the Appellant submitted to the Player a proposal, already signed by the owners of Nitra, ready for his signature;

v. all the other players of the same generation as the Player who were in a comparable situation were offered and signed a professional contract.

41. In light of the foregoing, the Appellant claims to be entitled to receive the payment of training compensation in accordance with Article 6.4 of Annexe 4 to the RSTP, because it offered the Player a professional contract and, at the same time, it took an unambiguous proactive attitude to show its interest in retaining the services of the Player for the season 2009/2010.

42. Finally, the Appellant submits that the amount it is entitled to receive corresponds to EUR 220,000.

43. In that regard, the Appellant notes that both Nitra and Banik – belonging to national football federations within the European Union and members of UEFA – have been inserted by their respective football associations into category III for the purposes of the calculation of training compensation pursuant to Article 4 of Annexe 4 to the RSTP. As a result of that classification, Nitra would be entitled to be paid an amount of EUR 130,000, determined on the basis of EUR 10,000 for each of the four seasons from 2002/2003 to 2005/2006, and of EUR 30,000 for each of the three seasons from 2006/2007 to 2008/2009.

44. The Appellant, however, refers to the FIFA Circular Letter No. 769 of 24 August 2001, explaining the then recently adopted regulations providing for training compensation, and indicating that for the purposes of its quantification the national football associations were invited to insert in category II *"all first-division clubs in … all countries with professional football"* of a lower level (as the SAF and the FACR), while category III was reserved to the second-division clubs of those federations. As a result, in the Appellant's opinion, the inclusion of Nitra and Banik into category III was wrong. Therefore, the Appellant submits that the Panel should disregard (pursuant to the FIFA Circular Letter No. 1249 of 6 December 2010) the classification made by SAF and FACR, and apply the correct training category, despite the fact that the football associations in question have indicated a different categorization. On that basis, Nitra would be entitled to receive EUR 10,000 for each of the four seasons from 2002/2003 to 2005/2006, and of EUR 60,000 for each of the three seasons from 2006/2007 to 2008/2009. For a total, therefore, of EUR 220,000.

45. Finally, the Appellant, at the hearing, confirmed that training compensation became due upon the transfer of the Player to Banik in July 2009, since the Player transferred at that time and the Respondent did not provide any element explaining the nature of the relationship with the Player in the period to May 2010, when the official professional contract was signed. In that regard, the Appellant indicates that the Player most likely had a position as a "semi-

professional" player with Banik, which would in any case trigger the obligation to pay training compensation.

b. The Position of the Respondent

46. At the hearing, Banik requested the CAS to dismiss the appeal filed by Nitra. In the Respondent's opinion, the Decision is "*just*" and the appeal against it "*ungrounded*".

47. In support of its request to have the appeal dismissed, the Respondent submits the following:

i. there is no evidence that the Appellant submitted to the Player an offer regarding a professional contract: more specifically, no evidence was provided to confirm that the contract filed in this arbitration was submitted to the Player for signature. To the contrary, the Respondent contends that the Player decided to transfer to Banik exactly because he had not been offered a contract and he felt that, remaining with Nitra, he would not have progressed in his career;

ii. in the last few years Banik's administration faced major financial problems, only recently solved. Therefore, the Respondent is not in a position to give details or explanations as regards the nature of the relationship between Banik and the Player in the period between July 2009 and May 2010. In the same way, no indications can be given with regard to the settlement negotiations which took place after the transfer of the Player. In any case, the offer made had only the purpose of suggesting a kind of fair proposal, and does not imply any recognition of the Appellant's rights;

iii. according to the FIFA Circular Letter No. 1223 of 29 April 2010, SAF and FACR were requested to divide their clubs into categories III and IV for the purposes of training compensation, and the parties were inserted into category III. As a result, should training compensation be payable, reference should be made to category III for its calculation.

3. LEGAL ANALYSIS

3.1 Jurisdiction

48. CAS has jurisdiction to decide the present dispute between the parties. In fact, the jurisdiction of CAS is not disputed by the parties and has been confirmed by the Order of Procedure.

49. In any case, the CAS jurisdiction is contemplated by the Statutes of FIFA (edition 2010) as follows:

Article 62

1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in

Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

2. *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.*

Article 63

1. *Appeals 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.*

2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*

3. *CAS, however, does not deal with appeals arising from:*
   (a) *violations of the Laws of the Game;*
   (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
   (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*

4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. […].*

3.2 Appeal Proceedings

50. As these proceedings involve an appeal against a decision rendered by an international federation (FIFA) in a matter relating to the payment of training compensation, brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non disciplinary case, in the meaning and for the purposes of the Code.

3.3 Admissibility of the Appeal

51. The admissibility of the appeal is not challenged by the Respondent. The statement of appeal was filed within the deadline set in Article 63 para. 1 of the FIFA Statutes. No further internal recourse against the Decision is available to the Appellant within the structure of FIFA. Accordingly, the appeal is admissible.

3.4 Scope of the Panel's Review

52. According to Article R57 of the Code,

"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance…".

3.5 Applicable Law

53. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

54. Pursuant to Article R58 of the Code, the Panel is required to 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".*

55. As a result of the foregoing, the Panel considers the FIFA rules and regulations to be the applicable regulations for the purposes of Article R58 of the Code, and that Swiss law applies subsidiarily.

56. The provisions set in the FIFA rules and regulations which are relevant in this arbitration are set in the RSTP and its Annexe 4 and include the following:

> **Article 20** (*"Training compensation"*)
>
> *Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations.*
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> **Annexe 4** (*"Training compensation"*)
>
> **Article 1** *"Objective"*
>
> 1. *A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.*
> 2. *The obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract.*
>
> **Article 2** *"Payment of training compensation"*
>
> 1. *Training compensation is due when:*
>   - *i. a player is registered for the first time as a professional; or*
>   - *ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday.*

2. Training compensation is not due if:

i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or

ii. the player is transferred to a category 4 club; or

iii. a professional reacquires amateur status on being transferred.

Article 4 *"Training costs"*

1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year.

Article 5 *"Calculation of training compensation"*

1. As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

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.

4. The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.

Article 6 *"Special provisions for the EU/EEA"*

1. For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:

a) If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.

b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.

2. Inside the EU/EEA, the final season of training may occur before the season of the player's 21st birthday if it is established that the player completed his training before that time.

3. If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s).

3.6 The Dispute

57. On the basis of the relief requested by the parties, the object of these proceedings is the claim submitted by Nitra to be paid by Banik an amount corresponding to training compensation for the transfer of the Player. The DRC denied it, holding in the Decision that the conditions triggering the Appellant's right to obtain training compensation were not satisfied. The Respondent agrees with the Decision and submits that no compensation is to be paid to the Appellant.

58. As a result of the above, there are two main questions that have to be examined in this arbitration:

i. is the Appellant entitled to training compensation, to be paid by the Respondent, for the transfer of the Player?

ii. in the event the Appellant is found to be entitled to training compensation, what is the amount to be paid by the Respondent?

59. The Panel shall consider each of said questions separately.

i. Is the Appellant entitled to training compensation for the transfer of the Player?

60. The question whether the Appellant is entitled to training compensation for the transfer of the Player has to be solved under the applicable rules set in the RSTP (§ 56 above), taking into account the circumstances relating to the transfer of the Player.

61. In this respect, the Panel notes that it is common ground between the parties that, as also acknowledged by the Decision:

i. Nitra is the "training club" of the Player for the purposes of Article 20 RSTP and Annexe 4 to the RSTP. Indeed, the fact that the Player trained with Nitra since his childhood and always played with Nitra until his transfer to Banik is not disputed;

ii. the claim brought by Nitra to be paid training compensation is to be assessed pursuant to Article 6 of Annexe 4 to the RSTP, since the Player moved from one association (the SFA) to another (the FACR) inside the territory of EU/EEA.

62. The parties' dispute centres on the conditions indicated at Article 6.3 of Annexe 4 to the RSTP. If satisfied, these conditions trigger the Respondent's obligation to pay training compensation: the Appellant submits that the conditions are met; the Respondent and the Decision state that they are not.

63. Under Article 6.3 of Annexe 4 to the RSTP a club is entitled to receive training compensation upon the signature by the Player of his first professional contract with a different club, subject to some conditions. In order to claim training compensation, the training club must have offered a contract to the player; or alternatively, if a contract has not been offered, the training club must otherwise justify its entitlement to training compensation.

64. As well known, the special provisions on training compensation are one of the results of the *"Principles for the amendment of FIFA rules regarding international transfers"* agreed in March 2001 between FIFA and UEFA, on the one side, and the European Union, on the other side. These Principles are, among other things, intended to reconcile the prohibition of restrictions on free movement of players (workers) within the European Union with the need to provide clubs with the necessary incentives to invest in training and education of young players. In this connection, Article 2 of the "Principles" (under the heading *"Training compensation for young players"*) states, *inter alia*, as follows: *"In order to promote player talent and stimulate competition in football it is recognised that clubs should have the necessary financial and sporting incentives to invest in training and educating young players. It is further recognised that all clubs which are involved in the training and education process should be rewarded for their contribution"*. Furthermore, and also relevant to the case at hand, is Annex 1 of the Principles (dealing in more detail with the subject of training compensation) which states, *inter alia*, at paragraph B.7 as follows: *"Further, in the EU/EEA, if the training club does not offer the player a contract this should be taken into account in determining the training fee payable by the new club"*. Consequently, the Principles confirm the overall importance of encouraging (and rewarding) player training but also contemplate that training clubs should show that they intend to take advantage of the training they have provided to the player in question, by offering him a contract or otherwise.

65. The first question is whether Nitra offered the Player a contract. The Appellant, which bears the burden to provide evidence of the offer of a contract, maintains that it did, and in that respect filed in this arbitration (and before the DRC) a copy of a document titled (into its English unchallenged translation) *"Professional Contract"*, bearing the date of 25 June 2009 and two signatures on behalf of Nitra, which it allegedly offered to the Player. To confirm the offer, and to take issue with the Decision that held otherwise, the Appellant lodged with the CAS some witness statements on the point.

66. The Panel, however, notes that those witness statements have not been confirmed at the hearing and therefore (as mentioned above: § 33) have limited probative value. As a result, they are a little avail to the Appellant, taking into account the holding of the DRC and the

strong denials of the Respondent.

67. Therefore, and even though there is no formal procedure as such for offering a contract to an amateur player, the Panel considers that insufficient evidence has been provided to demonstrate that a professional contract (whether the one dated 25 June 2009 or any other) was offered to the Player before his transfer to Banik.

68. The question, then, turns to whether Nitra is, in any case, entitled to claim from Banik a payment as training compensation, even absent the offer to a contract. In fact, as made clear by Article 6.3 of Annexe 4 to the RSTP and underlined in the CAS jurisprudence (CAS 2006/A/1152, § 8.16; CAS 2009/A/1757 § 7.13), a claim to training compensation may be retained even if a professional contract has not been offered. Indeed, it would be unreasonable to require a club to offer a professional contract to every young amateur players in order to avoid the risk of losing any entitlement to training compensation. This is particularly the case in the view of the overall desirability of encouraging clubs to engage in player training, a principle that also finds expression in the jurisprudence of the European Court of Justice, notably in the *Olivier Bernard* case (Judgment of the Grand Chamber of 16 March 2010) where the Court stated, at paragraph 44, as follows:

" … clubs which provided the training could be discouraged from investing in the training of young players if they could not obtain reimbursement of the amounts spent for that purpose where, at the end of the training, a player enters into a professional contract with another club. In particular, that would be the case with small clubs providing training, whose investments at local level in the recruitment and training of young players are of considerable importance for the social and educational function of sport".

69. Nevertheless, as the CAS precedents (just mentioned) also indicate, in order to justify entitlement to training compensation, the training club should at least show a *bona fide* interest in retaining the services of the player for the future. At the same time, in order to encourage player training, the Panel considers that compensation should be granted whenever it would appear contrary to common sense to conclude that the training club was not at all interested in keeping the player.

70. The DRC held that Nitra had not offered such justification. After considering the Nitra's submissions, the DRC held that it was not possible to consider, failing *"any convincing documentary evidence"*, the statements concerning alleged negotiations with the Player in March-May 2009 as proof to *"unambiguously establish"* that Nitra had shown a *bona fide* and genuine interest in retaining the Player. In the same way, the DRC held that Nitra had failed to prove a pro-active stance towards the Player: considerations regarding the value of the Player being regarded as insufficient.

71. The Panel considers that the DRC followed an overly restrictive approach to the question of how a club may justify entitlement to training compensation and that this approach is not warranted by Article 6.3 of Annexe 4 of the RSTP or by the Principles that were agreed between FIFA/UEFA and the European Commission back in 2001. The Panel notes, in this respect, that the RSTP provisions do not require that evidence be *"unambiguous"* or *"documentary"* to ground a claim.

72. In that respect, the Panel notes that under Article 8 of the Swiss Civil Code any party wishing to prevail on a disputed issue must discharge its "burden of proof", i.e. must meet the onus to substantiate its allegations and affirmatively prove the facts on which it relies with respect to that issue. However, as made clear in the CAS jurisprudence (CAS 96/159 & 96/166), *"selon la jurisprudence fédérale suisse, dans le cas où une preuve directe ne peut pas être rapportée, le juge ne viole pas l'art. 8 CC … en fondant sa conviction sur des indices ou sur un haut degré de vraisemblance (ATF 104 II 68 = JdT 1979 I 738, à la p. 545). En outre, des faits dont on doit présumer qu'ils se sont déroulés dans le cours naturel des choses peuvent être mis à la base d'un jugement, même s'ils ne sont pas établis par une preuve, à moins que la partie adverse n'allègue ou ne preuve des circonstances de nature à mettre leur exactitude en doute (ATF 100 II 352, à la p. 356"* ["according to the Swiss federal case law, in the event direct evidence cannot be offered, a judge does not violate Article 8 of the Civil Code … if he bases his decision on inferences or on a high degree of likelihood … . In addition, events whose existence must be presumed according to the normal course of things can be relied on as a basis for judgment, even if these events are not confirmed by evidence, at any rate if the opposing party does not allege or establish circumstances sufficient to put their existence in doubt"].

73. Based on the foregoing interpretative approach, the Panel considers that the circumstances adduced by the Appellant lead to the reasonable conclusion that it desired to keep the player on its roster with a view to keeping alive the option of granting him a professional contract at a later stage. It is in fact beyond doubt that the Player is a talented player, who, already in 2009, had many chances to pursue a successful career. Indeed, the Player at the time of his transfer to Banik, had already been fielded with the first team of the Appellant, and was involved in the training session for the following season. In such context, it seems unreasonable to assume that Nitra intended to write-off its investment in the training of the Player and to forfeit any claim to training compensation. It is also to be noted that the Respondent previously (and specifically) stated that: *"we naturally do agree that the Claimant is entitled to receive the training compensation for the professional football player and the matter of dispute between the parties is just the high costs of this compensation"* (paragraph 9 of the Decision). Finally, it is also not disputed that the Player has been with Nitra since he was 6 years old and the club has therefore invested considerable time and expense in his formative training and education. This is a further relevant factor that the Panel takes into account.

74. In conclusion and answering the first question, the Panel holds that the Appellant is entitled to training compensation, to be paid by the Respondent, for the transfer of the Player.

ii. What is the amount to be paid by the Respondent as training compensation for the Player?

75. The second question, then, concerns the amount to be paid by the Respondent. The DRC did not render any decision on this point, having denied the entitlement of Nitra to claim any training compensation.

76. Under the RSTP, when a player moves from one club to another of the same category within the UE/EEA, training compensation is to be calculated on the basis of the training costs of

the category to which both clubs belong.

77. The Panel notes that both Nitra and Banik have been allocated by their respective national associations in category III, for which the training cost for the relevant years was defined in EUR 30,000 (while category IV had been assigned a cost of EUR 10,000). On the basis of such categorization of the parties and the mentioned definition of costs, Nitra would be entitled to receive EUR 130,000 as training compensation, corresponding to EUR 10,000 for each of the four seasons from 2002/2003 to 2005/2006 (i.e. for the seasons between the 12th and the 15th birthday of the Player: Article 5.3 of Annexe 4 to the RSTP), plus EUR 30,000 for each of the three seasons from 2006/2007 to 2008/2009.

78. Nitra, however, submits that said calculation would be wrong. To support this assumption, the Appellant refers to the FIFA Circular letter No. 769 of 24 August 2001, and submits that under it both Nitra and Banik should have been inserted by their federations into category II, being clubs of first division.

79. The Panel does not agree with this contention and notes that according to the FIFA Circular Letter No. 1223 of 29 August 2010 clubs belonging to the football associations of the Czech Republic and of Slovakia had to be inserted into categories III or IV, i.e. into the categories defined by FIFA, pursuant to Article 4 of Annexe 4 to the RSTP, taking into account multiple factors, including the average costs to be incurred to train players.

80. As a result, the criticism expressed by the Appellant has no merit, as it was not possible for the SAF and/or FACR to classify Nitra and/or Banik in a different category. In any case, the Panel notes that the Appellant has not brought any evidence to justify a claim that its inclusion in category III would lead to an unreasonably low level of compensation, taking into account the costs it actually sustained.

81. In light of the foregoing, the Panel concludes that Nitra is entitled to receive from Banik training compensation in the amount of EUR 130,000.

82. The Appellant, in respect of such amount, claims in this arbitration also the payment of interest, at the rate of 5% *per annum*.

83. Pursuant to Article 104.1 of the Swiss Code of obligations, interest for late payment is due in the amount of 5% *per annum*. Therefore, the Appellant is entitled to receive interest at such rate on the amount claimed as training compensation.

84. Training compensation is due when a Player is registered for the first time as a professional (Article 2.1 (i) of Annexe 4 to the RSTP). The Panel notes that in May 2010 the FACR registered the first professional contract of the Player. At the same time, however, the Panel remarks that the status of the Player in the period between July 2009 and May 2010 is not clear. In fact,

    i. the Appellant submits that the Player had a sort of "semi-professional" status while registered in that period with Banik, as allowed by the regulations in force in the Czech Republic;

ii. the Respondent admits that the category of "semi-professional" players exists in the Czech Republic, but, at the same time, states that it does not have any information regarding the status of the Player in the period between July 2009 and May 2010.

85. In the Panel's opinion, this situation should be held against the Respondent. It is, in fact, difficult to understand why an amateur would have transferred to Banik in July 2009 notwithstanding the interest shown by Nitra in his career; and the very explanation offered by Banik for the transfer (that the Player moved because Nitra had not offered him a professional contract) appears to be an indirect confirmation of the fact that a change in his status was offered by Banik. In addition, the Panel notes that Banik was in a better position than Nitra to give evidence as to the status of the Player in the period between July 2009 and May 2010 in order to confirm that the Player could not be equated to a professional even before May 2010. However, in this connection, Banik merely refers to the fact that the previous administration of the club faced some problems at the relevant time and that the new management has no knowledge of the nature of the relationship between the player and Banik between July 2009 and May 2010 (see paragraph 47(ii) above). The Panel does not find this to be a particularly convincing explanation and, failing any material evidence from the Respondent to suggest otherwise, concludes that training compensation became due on 15 July 2009, when the Player was registered with the FACR.

86. In conclusion, interest at 5% *per annum* accrues on the amount of EUR 130,000 starting from 15 July 2009 until the date of final settlement.

3.7 Conclusion

87. In light of the foregoing, the Panel holds that the appeal brought by Nitra against the Decision is to be partially upheld. The Decision is to be set aside and replaced by a new decision ordering Banik to pay Nitra training compensation in the amount of EUR 130,000, plus interest at 5% *per annum* starting on 15 July 2009.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Nitra on 7 August 2012 against the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 1 March 2012 is partially granted.

2. The decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 1 March 2012 is set aside.

3. FC Banik Ostrava is ordered to pay FC Nitra the amount of EUR 130,000 (one hundred thirty thousand Euros), plus interest at 5% (five percent) *per annum* from 15 July 2009 to the date of final payment.

(…)

6. All other prayers for relief are dismissed.