



**Arbitration CAS 2009/A/1919 Club Salernitana Calcio 1919 S.p.A. v. Club Atlético River Plate & Brian Cesar Costa, award of 7 May 2010**

Panel: Mr Christian Duve (Germany), President; Mr Rui Botica Santos (Portugal); Mr Pedro Tomás Marqués (Spain)

*Football*

*Compensation for training*

*Conditions for CAS jurisdiction*

*Decision without grounds*

*Exhaustion of all legal remedies*

*Standing to be sued*

*Free agents*

1. As acknowledged by CAS jurisprudence, there are three prerequisites that have to be met in order for CAS to have jurisdiction, namely (i) the appeal must be challenging a “decision” of a federation, association or another sports-related body, (ii) the parties involved must have agreed to the competence of CAS, and (iii) the (internal) legal remedies available must have been exhausted prior to appealing to CAS.
2. According to the broad interpretation of the term by the CAS jurisprudence, a decision issued without grounds is a decision under Article R47 of the CAS Code if it bears the formal and material characteristics thereof, i.e. the heading “decision”, the parties, the holding ordering a party to pay a certain amount of money in training compensation and is signed by a representative of the body in charge – according to the applicable rules – of announcing the decision in the name and on behalf of the body that took it.
3. The act of requesting the reasons of the decision cannot be qualified as an additional remedy available to the appellant in the sense of Article R47 of the CAS Code.
4. CAS jurisdiction derives from the issuance of a decision and is therefore limited to the scope of such decision and to the parties concerned by the same. If a party did not participate in the proceedings which led to the appeal proceedings, it has no standing to be sued before CAS.
5. According to CAS jurisprudence, free agents are players who are free from contractual engagements and for which no transfer fee is paid for their registration by a new club. There is no reference in the FIFA Regulations or CAS jurisprudence that this concept could also refer to training compensation.

Club Salernitana Calcio 1919 S.p.A (the “Appellant”) is an Italian football club with its registered office in Salerno, Italy. It is affiliated to the Italian Football Association (FIGC) and nowadays competes in the Italian Serie B.

Club Atlético River Plate (the “First Respondent”) is an Argentinean football club with its registered office in Buenos Aires, Argentina. It is affiliated to the Argentinean Football Association (AFA) and competes in the Argentinean Primera División.

Mr Brian César Costa (the “Second Respondent”) is a player agent from Buenos Aires, Argentina. He holds a player agent license issued by AFA.

Appellant has brought a dispute before the Court of Arbitration for Sport (CAS) against First Respondent and Second Respondent by means of an appeal challenging a decision from the FIFA Dispute Resolution Chamber (DRC) concerning the training compensation for the Argentinean player E. (the “Player”), born on 20 May 1986.

According to the Player Passport issued by AFA, the Player was registered with First Respondent as an amateur from 27 February 2002 until 31 December 2006.

In December 2006, First Respondent communicated to the Player in writing that it would grant the Player *Free Agent Status* in order for him to sign with another club (the “Letter of December 2006”).

On 14 March 2007, the Player signed an employment contract as a professional player with Appellant for the period between 31 January 2007 and 30 June 2011.

On 27 March 2007, the Player registered with Appellant as a professional player.

In April 2007, First Respondent brought a claim before the DRC requesting from Appellant payment of training compensation in the amount of EUR 150,000 for the training of the Player during the sporting seasons 2002, 2003, 2004, 2005 and 2006. First Respondent based its calculation of the amount of training compensation on the indicative amounts set forth in FIFA Circular letter number 959 (the “Circular 959”) for category III clubs competing in the UEFA confederation.

On 30 July 2007, Second Respondent issued an invoice (the “Invoice of July 2007”) charging Appellant an amount of EUR 220,000 as a “*commission for the introduction and negotiations*” of the Player and another player named L.

On 19 May 2008, Second Respondent wrote a letter to Appellant (the “Letter of May 2008”):

*“In my position as empowered and representative of the players [L.] AND [E.], I am glad to write to you in order to inform you that during the present week, River Plate will withdraw the demand regarding training compensation for the player [L.], in accordance with the agreement already found with the club RIVER PLATE according to which I, in my quality of Players’ Agent licensed by AFA, found an agreement with this Entity and will take care of the payment of the training compensation.*”

*With respect to the player [E.] the parties have agreed to suspend the federative claim until an agreement is found between the Club River Plate and the agent Brian Costa”.*

On 18 June 2009, the DRC issued a decision without grounds ordering Appellant to pay to First Respondent the amount of EUR 280,000 plus interests as training compensation for the Player (the “DRC Decision”). At the end of the DRC Decision, the following statement was added:

***“Note relating to the findings of the decision (art. 15 of the Rules governing Procedures of the Players’ Status Committee and the Dispute Resolution Chamber):***

*A request for the grounds of the decision must be sent, in writing, to the FIFA general secretariat within 10 days of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force”.*

On 2 July 2009, the DRC Decision was notified to the parties.

It is undisputed between the parties that Appellant did not request the grounds of the DRC decision to the FIFA General Secretariat.

On 23 July 2009, Appellant filed with CAS Court Office its Statement of Appeal challenging the DRC Decision of 18 June 2009.

On 3 August 2009, FIFA sent a letter to the CAS Court Office renouncing its right to intervene in the present arbitration proceedings. In addition, FIFA stated that because Appellant had not requested the grounds of the DRC decision in accordance with Article 15 (1) of the Rules governing Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “DRC Procedural Rules”), the DRC decision

*“is to be considered as final and binding, and the appeal challenging the said decision shall therefore be dismissed by the CAS without entering into its substance. Moreover, we would like to mention that an appeal against a non-motivated decision can per se not be admissible”.*

On 3 August 2009, Appellant filed with the CAS Court Office its Appeal Brief including, *inter alia*, a letter dated 31 July 2009 from the FIGC confirming that Appellant was classified in category III during the 2006/2007 sporting season.

On 1 September 2009, First Respondent filed with the CAS Court Office its Answer to the Appeal Brief.

On 6 October 2009, Second Respondent filed his Answer to the Appeal Brief.

On 30 March 2010, a hearing was held at the CAS headquarters in Lausanne.

During the hearing, the parties agreed that Appellant belonged to category III of the UEFA Confederation at the time that the Player was registered with Appellant as a professional player.

Furthermore, upon the request of the Panel, at the hearing the parties submitted the Player's employment contract with Appellant as a professional player signed on 14 March 2007. In addition, upon agreement of the parties, the Panel accepted some new documentation submitted by the parties, which turned out to be of no relevance for this case.

At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitral proceedings.

## LAW

1. It is disputed between the parties whether Appellant could successfully lodge an Appeal before CAS against an unmotivated DRC decision, without previously requesting the grounds of such decision. The Panel will, therefore, first enter into an analysis of the issues of jurisdiction and admissibility of the appeal before eventually entering into the merits of the present case.

## Jurisdiction

2. The jurisdiction of CAS in international football disputes derives in principal from Article R47 of the CAS Code in connection with Articles 62 and 63 of the FIFA Statutes. The relevant provisions read:

### Article R47 of the CAS Code - Appeal

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

### Article 62 of the FIFA Statutes

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 of the FIFA Statutes – Jurisdiction of CAS

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 recognized under the rules of an Association or Confederation may be made. [...]*
  3. As a result and as acknowledged by CAS jurisprudence (cf. CAS 2004/A/748, para. 83 and CAS 2008/A/1705, para. 5.2), pursuant to Article R47 of the CAS Code and Articles 62 and 63 of the FIFA Statutes, there are three prerequisites that have to be met in order for CAS to have jurisdiction, namely:
    - the appeal must be challenging a “decision” of a federation, association or another sports-related body;
    - the parties involved must have agreed to the competence of CAS;
    - the (internal) legal remedies available must have been exhausted prior to appealing to CAS.
  4. Consequently, the Panel will now address each of the aforementioned prerequisites in order to decide whether it has jurisdiction in the present matter.
- A. *Decision of a Federation*
5. CAS jurisprudence is inclined to choose a broad interpretation of the term “decision” under Article R47 of the CAS Code (cf. CAS 2008/A/1583 & 1584, para. 5.2.1 and CAS 2008/A/1705, para. 5.2.1), defining the concept of an appealable decision as follows:

*“A decision is thus a unilateral act, sent to one or more recipients and is intended to produce legal effects”*  
(CAS 2004/A/659, para. 36; CAS 2004/A/748, para. 89).

*“In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility or a request, without addressing the merits of such request”*  
(CAS 2005/A/899, para. 61; CAS 2004/A/748, para. 89).
  6. The Panel notes that the challenged DRC Decision was rendered by the DRC, one of FIFA’s dispute resolution bodies. It is therefore issued by a federation in the sense of Article R47 of the CAS Code and Article 63 (1) of the FIFA Statutes. Although the DRC rendered its “decision” without grounds, it still bears the formal and material characteristics of a decision in the sense of Article R47 of the CAS Code, i.e. the heading “Decision of the Dispute Resolution Chamber”, the parties, the holding ordering Appellant to pay EUR 280,000 in

training compensation for the Player plus interest. Furthermore, the “decision” is signed by the Deputy Secretary General of FIFA, Mr Markus Kattner, the general secretariat being in charge of announcing decisions in the name of and on behalf of the DRC according to Article 13 (3) of the DRC Procedural Rules (2005). The Panel therefore rules that the DRC Decision constitutes a decision in the sense of Article R47 of the CAS Code and Article 63 of the FIFA Statutes. The fact that the decision was notified without grounds, does not affect this characterization (cf. CAS 2008/A/1708, para. 71; CAS 2008/A/1705, para. 5.2.2; CAS 2008/A/1548 and CAS 2004/A/748, para. 89).

*B. Consent to Arbitration*

7. The Panel understands Article R47 of the CAS Code to provide for two different possibilities for the parties to agree to arbitration: either by means of a statutory arbitration clause or by a specific arbitration agreement. In the case at hand, the parties are bound by the arbitration agreement contained in Articles 62 and 63 of the FIFA Statutes. Furthermore, by lodging the appeal, participating in the CAS proceedings and by signing the Order of Procedure, the parties have actively acknowledged the competence of CAS to deal with this dispute (cf. CAS 2008/A/1705, para 5.2.3; and CAS 2008/A/1708, para. 72).

*C. Exhaustion of All Legal Remedies*

8. Finally, Article R47 CAS Code stipulates that a decision may be appealed to CAS “*insofar as the Appellant has exhausted the legal remedies available to him in accordance with the statutes and regulations of the said sports-related body*”. The decisions rendered by the DRC cannot be appealed in front of another dispute resolution body of FIFA. Appellant has therefore exhausted all legal remedies available. The act of requesting the reasons of the decision cannot be qualified as an additional remedy available to Appellant in the sense of Article R47 of the CAS Code (cf. CAS 2008/A/1705, para. 5.2.4; and CAS 2008/A/1708, para. 72).

**Mission of the Panel**

9. The mission of the Panel follows, in principle, from Article R57 of the CAS Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, Article R57 of the CAS Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

## Applicable Law

10. Abiding by Article R58 CAS Code, the CAS settles disputes  
*“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”.*
11. Moreover, Article 62 para. 2 of the FIFA Statutes provides that 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”.*
12. Due to the fact that the Statement of Appeal was filed on 23 July 2009, the Panel finds that the 2008 edition of the FIFA Statutes is applicable to this case. The Panel reaches this conclusion in accordance with Article 83 of the 2009 edition of the FIFA Statutes, which provides that the 2009 version of the FIFA Statutes entered into force on 2 August 2009, i.e. after the Statement of Appeal was filed by Appellant on 23 July 2009.
13. With regard to the FIFA Regulations, the Panel finds that the 2005 edition of the FIFA Regulations is applicable. To arrive to this conclusion, the Panel resorts to Article 26 (1) and 26 (2) of the 2008 edition of the FIFA Regulations which provide for the applicability of 2008 edition if the professional employment contract concluded between Appellant and the Player (which would trigger Appellant’s obligation to pay training compensation to First Respondent) was signed on or after the date said edition came into force. Therefore, since Article 29 (2) of the 2008 edition of the FIFA Regulations provides that the said regulations come into force on 1 January 2008 and as the contract between the Player and Appellant was concluded on 23 March 2007, the edition 2005 FIFA Regulations is applicable to this dispute.
14. Furthermore, the Panel finds that the 2005 edition of the DRC Procedural Rules is applicable based on the fact that the claim before the DRC was filed in April 2007 and Article 21 (1) of the 2008 edition of the DRC Procedural Rules provides that the said rules did not enter into force until 1 July 2008. In this regard, the Panel takes particular consideration of Article 21 (1) of the 2008 edition of the DRC Procedural Rules, which states that 2005 edition *“shall apply to cases submitted to FIFA before these rules came into force”.*
15. In addition, FIFA has issued a certain number of Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of the FIFA and the general practice of the federations and associations belonging thereto. Thus, the Panel considers these Circular Letters to be relevant also for the interpretation of the FIFA Regulations (cf. CAS 2003/O/527, p. 10; CAS 2004/A/560, p. 9; CAS 2004/A/686, p. 8 and CAS 2007/A/1320-1321, para. 44).
16. Finally, Swiss law is applicable due to the fact that the parties in the present case are bound by the FIFA Statutes for two reasons: first, they made a tacit choice of law when they submitted

themselves to arbitration rules that contained provisions relating to the designation of the applicable law; and second, all parties are – at least indirectly – affiliated to FIFA. Thus, this dispute is subject, in particular, to Article 62(2) of the FIFA Statutes, which provides that CAS *“shall primarily apply the various regulations of FIFA and, additionally, Swiss law”* (CAS 2006/A/1180, para. 7.9).

17. As a result, in light of the indispensable need for the uniform and coherent application worldwide of the rules regulating international football (cf. CAS 2005/A/983-984, para. 24), the Panel rules that Swiss law will be applied for all the questions that are not directly regulated by the FIFA norms (cf. CAS 2005/A/871, para. 4.15 and CAS 2009/A/1517, para. 118).

### Admissibility

18. Pursuant to Article R49 of the CAS Code, the appeal has to be filed with CAS within a certain time limit. The provision makes specific reference to the time limits fixed under the FIFA Statutes and to those fixed by the regulations of a federation whose decision is being appealed.
19. The FIFA Statutes contain a deadline within which an appeal must be filed. In accordance with Article 63 (1) of the 2008 edition of the FIFA Statutes (see paragraph 0 above), an appeal has to be filed with the CAS within 21 days of notification of the decision in question, which in the present case was on 2 July 2009. Appellant, therefore, had under 63 (1) of the FIFA Statutes until 23 July 2009 to file its Statement of Appeal, which it did on that same date.
20. However, both First Respondent and FIFA are of the opinion that the appeal is inadmissible because Appellant did not request for the grounds of the decision pursuant to the deadline contained under Article 15 (1) of the 2008 edition of the DRC Procedural Rules. This provision reads as follows:  
*“The [PSC], the [DRC], the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, **the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force**”* (emphasis added).
21. It is undisputed that Appellant has not requested for the grounds of the FIFA Decision within the 10-day deadline set forth under 15 (1) of the 2008 edition of the DRC Procedural Rules. However, as explained in paragraph 14 above, Article 21 (1) of the 2008 edition of the DRC Procedural Rules provides that the 2005 edition of the said rules applies to cases submitted to FIFA before these rules came into force on 1 July 2008. Since First Respondent filed its claim before the DRC in April 2007, the Panel applies the 2005 edition of DRC Procedural Rules in order to determine whether the appeal is admissible. The 2005 edition of the said rules do not



provide for a deadline for the parties to request for grounds of a FIFA decision. As a result, Appellant could not have been required to ask for the grounds of the DRC Decision within 10 days of its notification.

22. Consequently, since all the requirements of Article R47 CAS Code have been met and Appellant has lodged its appeal within the 21 day-deadline contained in Articles R49 CAS Code and Article 63 (1) of the FIFA Statutes, the Panel finds that appeal against the DRC Decision is admissible.
23. Nevertheless, the Panel would like to stress that the present decision does not call in question the system adopted by FIFA per se in the 2008 edition of the DRC Procedural Rules. Therefore, as already recommended by the Panels in cases CAS 2008/A/1705 and CAS 2008/A/1708, FIFA should consider (i) to integrate Article 15 of the DRC Procedural Rules into the FIFA Statutes to prevent conflicts with the hierarchy of the norms and (ii) to issue notices to the parties in such a clear way that no doubt can exist on what action a party is requested and entitled to do upon having been informed on the results of a proceeding before the DRC.

## Merits

24. The main issues to be resolved by the Panel in deciding this dispute are the following:
  - a) Does Second Respondent have standing to be sued in these appeal proceedings?
  - b) Is First Respondent entitled to training compensation?
  - c) What is the correct amount of training compensation?
  - d) What are the legal consequences of the Panel's findings?

### *A. Does Second Respondent Have Standing to Be Sued in these Appeal Proceedings?*

25. Second Respondent argues that he does not have standing to be sued because he was not a party in the proceedings before the DRC; moreover, since training compensation would be an issue solely related to football clubs and finally, any personal liability of Second Respondent should have been determined initially under the competence of the PSC.
26. On a preliminary basis, the Panel notes that neither the FIFA Regulations nor the CAS Code contains any specific rule regarding a party's standing to be sued (cf. CAS 2008/A/1517, 1518). Under Swiss law, in contrast, the defending party has standing to be sued if it is personally affected by the "disputed right" at stake (cf. CAS 2007/A/1329 & 1330 p. 4, CAS 2006/A/1206). In this regard, the panel in the case CAS 2007/A/1329 & 1330 stated:

*“a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)”*

(CAS 2007/A/1329 & 1330, p. 4).

27. In addition to the interpretation of the concept of standing to be sued by CAS jurisprudence, the Panel considers the well-established principle that CAS jurisdiction derives from the issuance by FIFA of a decision and is therefore limited to the scope of such decision and to the parties concerned by the same (cf. CAS 2005/A/835 & 942, para. 83).
28. It is undisputed between the parties that Second Respondent did not participate in the proceedings before the DRC which led to the present appeal proceedings. As a result, the Panel finds that Second Respondent has no standing to be sued before CAS as he was not a party to the proceedings before the DRC.

*B. Is First Respondent Entitled to Training Compensation?*

29. First Respondent maintains that it is entitled to training compensation in accordance with Article 20 of the FIFA Regulations and Annex 4 of the FIFA Regulations. Hence, in his Answer to the Appeal Brief, First Respondent requests CAS to uphold the DRC decision.
30. In contrast, Appellant argues that training compensation is not due since First Respondent waived its right to training compensation by granting the Player *free agent status*.
31. In principle, the party which pursues a claim must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party that asserts facts to support its rights has the burden of establishing them (see also Article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 471). The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence (cf. CAS 2005/A/1003, paras. 49, 51; CAS 2003/A/506, para. 54; CAS 2008/A/1468, para. 90; and CAS 2009/A/1810-1811, para. 46). As a result, First Respondent bears the burden of proving that it is entitled to training compensation for the Player and Appellant bears the burden of proving its allegation that First Respondent waived such right to training compensation for the Player.
32. In light of the above, the Panel will first determine whether First Respondent is in general entitled to training compensation for the Player pursuant to the FIFA Regulations (see section a) and, if so, whether First Respondent waived its right to training compensation for the Player as alleged by Appellant (see section b).

a) In general

33. In order for the Panel to determine whether First Respondent is in general entitled to training compensation for the Player, the Panel turns to Article 20 of the FIFA Regulations, which reads:

*“Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional [...]. The provisions concerning training compensation are set out in Annex 4 of these Regulations”.*

34. Due to the reference made in Article 20 of the FIFA Regulations, the Panel also considers Articles 1 and 2 of Annex 4 to the FIFA Regulations, which stipulate:

Article 1

*“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. [...]”.*

Article 2

*“1. Training compensation is due:*

- i) when a player is registered for the first time as a professional [...] before the end of the Season of his 23rd birthday”.*

35. It has been established that the Player was registered with First Respondent as an amateur from 27 February 2002 until 31 December 2006 between the ages of 16 to 20. On 14 March 2007, the Player signed an employment contract as a professional player with Appellant. On 27 March 2007, the Player registered with Appellant as a professional player.
36. The Player was less than 21 years old when he was training and playing with First Respondent and less than 23 years old not only when he registered as a professional player with Appellant, but also when First Respondent lodged a formal claim before FIFA for training compensation.
37. Consequently, pursuant to Article 20 of the FIFA Regulations and Articles 1.1 and 2.1 of Annex 4 to the FIFA Regulations, the Panel finds that First Respondent is entitled, in general, to training compensation for the Player for the 2002, 2003, 2004, 2005 and 2006 sporting seasons. As the Player was registered with First Respondent only from February 2002 onwards, First Respondent is only entitled to receive training compensation for the 10 months it trained the Player during the 2002 sporting season. For the other sporting seasons, First Respondent is entitled to receive full training compensation as it trained the Player for 12 months each season.

b) In particular, did First Respondent waive its right to training compensation?

38. Appellant argues that First Respondent is not entitled to training compensation in this case as it waived its right to training compensation in December 2006. To support its claim, Appellant submits the Letter of December 2006 addressed to the Player and signed by the First Respondent's Club President, stating the following:

*"Dear Sir,*

*We write to you in order to inform you that this Entity has decided to give you the Free Agent Status in order for you to sign for the club of your choice. [...]"*

39. First Respondent argues that it did not intend to waive its right to training compensation by the abovementioned declaration. Instead, it simply wanted to inform the Player of his right to register with another club.

40. In light of the above, the Panel has to determine whether First Respondent waived its right to receive training compensation for the Player from Appellant by granting the Player the status of "free agent" as alleged by Appellant.

41. Consequently, the Panel resorts to the interpretation that CAS jurisprudence has given to the concept of *free agent*. According to the Panel in the case CAS 2004/A/635, free agents are "players who are free from contractual engagements" (cf. CAS 2004/A/635, para. 63) and thus no transfer fee is paid for their registration by a new club. There is no reference in the FIFA Regulations or CAS jurisprudence that this concept could also refer to training compensation.

42. Furthermore, the Panel notes that Letter of December 2006 contains no reference to the topic of training compensation. Therefore, the Panel does not deem that the document presented by Appellant evidences a possible waiver by First Respondent of its right to training compensation for the Player. The Panel finds that Appellant failed to substantially discharge its burden of proving the alleged waiver by First Respondent.

43. For these reasons, the Panel holds that First Respondent is entitled to training compensation for the Player. Hence, it is now for the Panel to decide on the correct amount of training compensation due by Appellant to First Respondent.

*C. What is the Correct Amount of Training Compensation?*

44. In the DRC Decision, the DRC calculated the training compensation of the Player in the amount of EUR 280,000. However, Appellant claims that the DRC erred in the calculation of the training compensation for the Player as First Respondent would be entitled to a maximum amount of EUR 142,500 based on the fact that Appellant belonged to category III of the UEFA confederation at the time it registered the Player as a professional.

45. Therefore, in order to decide whether the amount of training compensation awarded by the DRC was correct, the Panel will calculate the amount of training compensation pursuant to Articles 3, 4 and 5 of Annex 4 to the FIFA Regulations. The relevant parts of these provisions read as follows:

Article 3

*“1. On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. [...]”.*

Article 4

*“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

*“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. [...]”.*

46. Furthermore, pursuant to the reference contained in Article 4 of Annex 4 to the FIFA Regulations, the Panel considers Circular 959, which states:

*“Each member association is asked to allocate its affiliated club into categories in accordance with the club’s financial investment in training young players. Attached to this circular letter you will find a table for each confederation, setting out the categories in which each association is asked to allocate its clubs as well as the training costs, which are established on a confederation basis for each category of clubs”.*

47. In addition, the Panel considers the Annex to Circular 959, which contains the following table with the indicative amounts classified per confederation and club category:

<i>Confederation</i>	<i>Category I</i>	<i>Category II</i>	<i>Category III</i>	<i>Category IV</i>
<i>AFC</i>		<i>USD40,000</i>	<i>USD10,000</i>	<i>USD 2,000</i>
<i>CAF</i>		<i>USD30,000</i>	<i>USD10,000</i>	<i>USD2,000</i>
<i>CONCACAF</i>		<i>USD40,000</i>	<i>USD10,000</i>	<i>USD2,000</i>
<i>CONMEBOL</i>	<i>USD50,000</i>	<i>USD30,000</i>	<i>USD10,000</i>	<i>USD2,000</i>
<i>OFC</i>		<i>USD30,000</i>	<i>USD10,000</i>	<i>USD2,000</i>
<i>UEFA</i>	<i>EUR 90,000</i>	<i>EUR 60,000</i>	<i>EUR 30,000</i>	<i>EUR 10,000</i>

48. As Article 5 (1) and (2) of Annex 4 to the FIFA Regulations provide for a calculation of training compensation on the basis of the training costs of the new club, the Panel turns to the amounts set out in the row related to “UEFA”, as Appellant is affiliated to the FIGC, a member of UEFA.
49. In accordance with the parties’ oral submissions, it is undisputed between the parties that Appellant belonged to category III of the UEFA confederation at the time it registered the Player as a professional. This was confirmed by FIGC to FIFA in a letter dated 31 July 2009.
50. Pursuant to Articles 3, 4 and 5 of Annex 4 to the FIFA Regulations, the indicative amounts set forth in Circular 959 and in light of the fact that First Respondent trained the Player for approximately 4 years and 10 months (as explained in paragraph 37 above), the Panel finds that First Respondent is entitled to receive from Appellant a total amount of EUR 145,000 in training compensation for the Player (one time EUR 25,000 for the 10 months of training received during the 2002 sporting season + four times EUR 30,000 for the 12 months of training received during the 2003, 2004, 2005 and 2005 sporting seasons), as it can be seen from the following table:

<b>Sporting season</b>	<b>Number of Months Training with First Respondent</b>	<b>Age of the Player</b>	<b>Applicable UEFA Category</b>	<b>Indicative Amount Circular 959</b>	<b>First Respondent's Entitlement</b>
2002	10 months	16	III	EUR 30,000	EUR 25,000
2003	12 months	17	III	EUR 30,000	EUR 30,000
2004	12 months	18	III	EUR 30,000	EUR 30,000
2005	12 months	19	III	EUR 30,000	EUR 30,000
2006	12 months	20	III	EUR 30,000	EUR 30,000
<b>TOTAL AMOUNT OF TRAINING COMPENSATION</b>					<b>EUR 145,000</b>

*D. What are the Legal Consequences of the Panel's Findings?*

51. The Panel has found that First Respondent satisfied its burden that it was entitled to training compensation for the Player and that Appellant failed to satisfy its burden of proving that First Respondent waived its right to training compensation for the Player. However, the Panel has found that the correct amount of training compensation for the Player that First Respondent is entitled to is EUR 145,000 in accordance with the FIFA Regulations and Circular 959. Therefore, the Panel finds that First Respondent is entitled to receive a total of EUR 145,000 in training compensation for the Player from Appellant.

**Interests**

52. With regard to interests, the DRC Decision ordered Appellant to pay interests at a rate of 5% p.a. if it failed to pay the amount of training compensation within 30 days of notification of the DRC Decision. In accordance with this ruling and due to the fact that the DRC Decision was notified on 2 July 2009, had Appellant not filed an appeal before CAS, it should have paid interests to First Respondent at an annual rate of 5% as of 3 August 2009.
53. However, at the hearing First Respondent orally submitted that interests should be paid at the annual rate of 5% on the amount of training compensation as of April 2007, when First Respondent filed its claim with FIFA for training compensation. Yet, First Respondent failed to file a counter appeal against the DRC Decision asking for this request. As a result, the Panel cannot rule *ultra petita* and will have to abide by the payment date set by the DRC to yield interests (cf. CAS 2007/A/1233 & 1234, para 66, and CAS 2007/A/1518, para. 171).

54. For the above-mentioned reasons, the Panel finds that First Respondent is entitled to receive from Appellant interests on the total amount of EUR 145,000. Therefore, the Panel rules that Appellant has to pay the First Respondent a 5% annual interest rate on the training compensation owed under Article 20 of the FIFA Regulations as of 3 August 2009.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by Club Salernitana Calcio 1919 S.p.A. against the decision issued on 18 June 2009 by the Dispute Resolution Chamber of FIFA is partially upheld.
  2. The decision issued on 18 June 2009 by the Dispute Resolution Chamber of FIFA is partially confirmed.
  3. Club Salernitana Calcio 1919 S.p.A. has to pay to Club Atlético River Plate the amount of EUR 145,000, with interest accruing on such amount at the annual rate of 5% (five percent) as from 3 August 2009.
- (...)
6. All other motions or prayers for relief are dismissed.