



Arbitration CAS 2007/A/1218 NK Zadar v. Club Cerro Corá, award of 18 October 2007

Panel: Mr Hendrik Willem Kesler (The Netherlands), Sole Arbitrator

Football

Training compensation

Status of the player

Effect of the FIFA circulars

Adjustment of the compensation for training

1. It is the responsibility of the new club to calculate the amount of the compensation for training and education. Consequently, the new club of the player shall take into consideration the player's career history. For this purpose, the new club shall, if necessary, require the assistance of the player. In this respect, the alleged lack of information provided by the parties involved does not release the new club from its obligation to exercise due diligence in order to find out what the status of the player is, that is whether or not the latter has ever signed an employment contract before he joined the club.
2. Although the FIFA circulars 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, these circulars are relevant also for the interpretation of the FIFA Regulations.
3. The general principle of equal treatment of the member federations requires that possible adjustments of the compensation for training must be based only on criteria established by the applicable rules and regulations. The new club's submissions that the contractual period was very short and that it was provided with misleading information as to the player's registration history and skills do not constitute suitable criteria to evaluate the training costs of the former club. The latter cannot be held responsible nor suffer from the consequences of the new club's failure to act with the prudence that a reasonable professional club would exercise when hiring a less than 23 years old amateur player.

NK Zadar is a football club with its registered office in Zadar, Croatia ("the Appellant"). It is a member of the Croatian Football Federation, which has been affiliated to the Fédération Internationale de Football Association (FIFA) since 1992.

Club Cerro Corá is a football club with its registered office in Campo Grande, Paraguay (“the Respondent”). It is a member of the Paraguayan Football Association (Asociación Paraguaya de Fútbol – APF), itself affiliated to the FIFA since 1925.

The player D. (the “Player”) was born on 29 October 1982.

The Player was registered with:

- the Respondent from 1 April 1997 to 6 February 2002;
- the Paraguayan club Sport Colombia from 7 February to 31 May 2002;
- the Respondent from 1 June 2002 until 5 August 2004;
- the club Sport Colombia from 6 August until 31 August 2004;
- the Respondent on 31 August 2004.

Whether D. was registered as a professional player with the Respondent or the club Sport Colombia is disputed.

On 26 August 2004, the Appellant, which was interested in securing the Player’s services, sent to the Respondent the following letter:

“(…)

We thank you for your letter referring to the transfer for the player D. to Europe Club – NK Zadar – Croatia.

We agree that Mr. Carlos Pérez Garay, President, together with player D. come immediately to Zadar – Croatia for discussion about transfer. We would like to point out that cancelling date for player’s registration is 31st August 2004 (...).”

On 27 August 2004, Mr Carlos Pérez Garay, the president of the Respondent, informed the Appellant in writing that he could not travel to Zadar. However, he explained that the Respondent’s authorized representative, Mr Oscar Villon, would accompany the Player to Croatia in order to negotiate his transfer. Furthermore, Mr Carlos Pérez Garay confirmed that the Player’s airplane would land in Zagreb on 28 August 2004 at 17 h 15.

On 31 August 2004, the Appellant signed with the Player a contract, which reads as follows where relevant (as translated into English by the Appellant):

“(…)

Article 1

The Club employs the Player as a professional (...).

Article 2

This contract is concluded for a period of 3 (three) years of competition and is valid until July 31, 2007 (...).

Article 3

For the services that the Player is obliged to perform for the Club, services subject of this Contract, and the club Regulations, the contracting parties establish.

1. I Competition Year (from August 31, 2004 to July 31, 2005)

- a) *The club undertakes to pay the Player a monthly net amount of 6,000.00 (...) American dollars (...)*
- b) *The club undertakes to pay 80,000.00 (...) U\$ to Cerro Cora de Campo Grando Club from Paraguay by December 31, 2004, as first part of Player's remuneration.*

The Contracting parties agree that inasmuch as the Club does not carry out the payment of the above-mentioned first part of the remuneration to Cerro Cora de Campo Grando Club, this contract is broken.

2. II Competition Year (from July 31, 2005 to July 31, 2006)

- a) *The Club undertakes to carry out a monthly net payment of 10,500.00 (...) U\$ which amount will be paid to the Player by the 10th of the current month for the previous month.*
- b) *The Club undertakes to pay 125,000.00 (...) U\$ to Cerro Cora de Campo Grando Club from Paraguay as second part of the remuneration for the Player, and the mentioned amount will be paid in two instalments: (...).*

3. III Competition Year (July 31, 2006 – July 31, 2007)

- a) *The Club undertakes to carry out a monthly net payment of 16,600.00 (...) U\$ which amount will be paid to the Player by the 10th of the current month for the previous month.*
- b) *The Club undertakes to pay 200,000.00 (...) U\$ to Cerro Cora de Campo Grando Club from Paraguay as third part of the indemnity for the Player, and the mentioned amount will be paid in two instalments: (...).*

On 31 August 2004, at 23 h 34, the Croatian Football Federation received from the APF a faxed copy of the international transfer certificate of the Player. According to this document (as translated into English by the Appellant) "D. belonged to Club Cerro de Campo Grande". The original was received by mail by the Croatian FA on 28 September 2004.

On 21 October 2004, the Appellant and the Player mutually agreed to terminate the employment contract dated 31 August 2004.

On 5 July 2005, the Respondent initiated proceedings before the FIFA Dispute Resolution Chamber to order the Appellant to pay in its favour an amount of USD 405,000 as training compensation pursuant to article 3 of the contract dated 31 August 2004.

On 25 August 2006, The FIFA Dispute Resolution Chamber concluded that the Appellant had to pay to the Respondent an amount of EUR 144,166 notably on the following grounds (page 6 par. 13):

"(...) taking into consideration the fact that the player signed his first professional contract with the Respondent at the age of 21, the Chamber considered that the Claimant is entitled to receive training compensation for the period of time that the player D. was trained and educated with it, that is, from 1 April 1997 to 7 February 2002 and from 1 June 2002 to 6 August 2004 between the ages of 14 and 21, as confirmed by the APF".

The FIFA Dispute Resolution Chamber awarded training compensation based upon:

- the number of years it considered the Player to have been registered with the Respondent;
- the fact that, according to the APF, the Appellant was a category 3 club from 1994 to 2001 and a category 4 club from 2002 to 2004;

- the parameters and indicative amounts laid out in article 7 of the FIFA Regulations governing the Application of the Regulations for the Status and Transfer of Players (edition 2001) and in the FIFA Circular Letter No. 959 dated 16 March 2005.

As a result, the FIFA Dispute Resolution Chamber ruled that the Respondent was entitled to receive from the Appellant the following training compensation (page 7 par. 20):

- *for $\frac{3}{4}$ of the sporting season 1997: EUR 7,500, that is between the ages of 14 and 15 of the player D.;*
- *for the sporting seasons 1998, 1999, 2000 and 2001: EUR 30,000 each, that is between the ages of 15 and 19 of the player D.,*
- *for the 8 months of the sporting season 2002: the amount of EUR 6,666, that is between the ages of 19 and 20 of the player D. and*
- *for the sporting season 2003: EUR 10,000, that is between the ages of 20 and 21 of the player D”.*

Consequently, on 25 August 2006, the FIFA Dispute Resolution Chamber decided the following:

- “1. The claim of the Claimant, the club Cerro Corá, is partially accepted.*
- 2. The Respondent, the club NK Zadar, has to pay the amount of EUR 144,166 to the Claimant.*
- 3. The amount due to the Claimant has to be paid by the respondent within 30 days as from the date of notification of this decision.*
- 4. If the aforementioned amount is not paid within the stated deadline, an interest rate of 5% per year shall apply, as from expiry of the stated deadline.*
- 5. In the event that the respondent, NK Zada, does not comply with the present decision, the matter shall be submitted to FIFA’s Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
- 6. Any further claims of the claimant club, Cerro Corá, are rejected.*
- 7. The Claimant is directed to inform the Respondent directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
- 8. According to art. 61 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision (...).”*

On 18 December 2006, the Appellant was notified of the decision issued by the FIFA Dispute Resolution Chamber (“the Decision”).

It is undisputed that to date, the Appellant has not paid any training compensation to the Respondent with regard to the Player.

On 8 January 2007, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS). This document contains a statement of the facts and legal arguments accompanied by supporting documents. It challenged the above-mentioned Decision, submitting the following request for relief:

“On the basis of the all of the above said, the Appellant files this appeal, proposes to CAS, as the appeal authority, to request ex officio from the FIFA General Secretary, the first copy of ITC for the player D. when he joined FC Zadar from the club Cerro Corra, which clearly shows that the said player was not an amateur but a professional player when he joined FC Zadar and that, due to that, there is no duty of the Appellant to pay any amount of contribution for training and development.

The Appellant requests from CAS to oblige the Respondent to compensate the costs of this Appeal and of the entire procedure that the Appellant has suffered”.

On 21 January 2007, the Appellant filed its appeal brief.

The Appellant’s submissions, in essence, may be summarized as follows:

- The international transfer certificate issued by the APF identifies the Player as a professional. Therefore, no training compensation can be awarded to the Respondent since the Player was already a non-amateur player before he joined the Appellant.
- Based on the international transfer certificate issued by the APF, the Appellant legitimately assumed that the Player had a non-amateur status when the employment agreement was signed on 31 August 2004.
- The APF did not provide the Appellant with the Player’s passport containing the relevant details of the Player. The Appellant had therefore not been able to trace the sporting history of the Player.
- The amount of training compensation awarded is excessive. Under the terms of the FIFA Circular Letter No 826, dated 31 October 2002, the Sole Arbitrator can adjust the amounts for training compensation so as to reflect the specific situation of the case. The following particular circumstances must be taken into account:
 - o The Appellant and the Player were contractually bound for a very short period.
 - o The Appellant was provided with misleading information as to the Player’s skills. Allegedly, the latter’s performances were particularly poor.

On 22 February 2007, the Respondent filed an answer, with the following request for relief:

“The Respondent, therefore requests that the CAS makes a decision under the following terms:

- a) *That the appeal submitted by NK Zadar be rejected;*
- b) *That the decision of FIFA Dispute Resolution Chamber dated August 25, 2006 be upheld;*
- c) *That NK Zadar pays all of the arbitration costs.*
- d) *That NK Zadar contributes with the amount CHF 15,000.00 to defray the costs incurred by Cerro Cora to defend themselves in this case”.*

The submissions of the Respondent may be summarised as follows:

- The original international transfer certificate issued by the APF does not specify whether the Player was an amateur or a professional player. The copy of the international transfer certificate produced by the Appellant had been altered in order to substantiate the facts on which it relies with respect to the Player’s professional status. *“Consequently, we strongly remark that the lawyer*

*representing NK Zadar did not hesitate to **modify and forge the IRTC of player D**, to reinforce their position”.*

- In any case, the Appellant signed the employment agreement with the Player before it received a copy of the international transfer certificate issued by the APF.
- According to the applicable FIFA regulations, the APF was the competent authority to attest the Player’s status until the latter joined the Appellant. In the present case, the APF has confirmed in writing that the Player was registered as an amateur when he played with the Respondent and with Club Sport Colombia.
- The Player did not meet the conditions specified in the Paraguayan law in order to be a professional player as he was registered with the Respondent.
- It was the duty of the Appellant to conduct further research regarding the Player’s status before hiring him.

A hearing was held on 19 September 2007 in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 60 ff. of the FIFA Statutes and article R47 of the Code of Sport-related Arbitration (the “Code”). It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

Applicable law

4. Article R58 of the Code provides the following:

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

5. Article 60 par. 2 of the FIFA Statutes provides “[t]he 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”.
6. The Sole Arbitrator is of the opinion that the parties have not agreed on the application of any specific national law. He is comforted in his position by the fact that, in their respective submissions, the parties refer exclusively to FIFA’s regulations. As a result, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall only apply complementarily.
7. The case at hand was submitted to the FIFA Dispute Resolution Chamber after 1 July 2005. Article 26 par. 1 and 2 of the revised Regulations for the Status and Transfer of Players (edition 2005) stipulates the following:
 - “1. Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations.
 2. As a general rule, all other cases shall be assessed according to these Regulations, with the exception of the following.
 - a. Disputes regarding training compensation
 - b. Disputes regarding the solidarity mechanisms
 - c. Labour disputes relating to contracts signed before 1 September 2001.

Any case not subject to this general rule shall be assessed in accordance with the Regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose”.
8. The relevant contract at the basis of the present case was signed on 31 August 2004. In the view of the above quoted provision and of the FIFA Circular Letter No 995 dated 23 September 2005, the previous Regulations for the Status and Transfer of Players (edition 2001) (the “FIFA Regulations”) shall govern the decision of this dispute.

Procedural Motions

- a) *Communication by FIFA of its file and specific questions raised by the Sole Arbitrator*
9. Based on article R44.3 and article R57 of the Code, the Sole Arbitrator namely requested:
 - the FIFA to send its complete file on which its Dispute Resolution Chamber based its Decision in the present matter;
 - the APF to confirm the Player’s status before he joined the Appellant and to provide a copy of the Player’s international transfer certificate, which was sent to the Croatian Football Federation;
 - the Croatian Football Federation to send a copy of the Player’s international transfer certificate, which was received from the APF.

b) Admission of new evidence presented by the Appellant

10. On 5 July 2007, the Appellant produced further arguments and evidence to support its submissions.
11. On 16 July 2007, the Respondent informed the CAS Court Office that it did not agree with the filing by the Appellant of new arguments and evidence.
12. Article R56 of the Code provides the following:
“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer”.
13. Based on article R56 of the Code and in the absence of exceptional circumstances, the document presented by the Appellant on 5 July 2007 must be excluded from the proceedings.

Admissibility

14. The appeal was filed within the deadline provided by the FIFA Statutes and stated in the Decision of the FIFA Dispute Resolution Chamber. It complied with all other requirements of article R48 of the Code.
15. It follows that the appeal is admissible.

Merits

16. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:
 - A. Was the Player a non-amateur before he joined the Appellant?
 - B. Is the Respondent entitled to training compensation?
 - C. What is the correct calculation of the training compensation?
 - D. Are there any reasons to adjust the training compensation?

A) *Was the Player a non-amateur before he joined the Appellant?*

(1) In general

17. The Appellant claims that according to the international transfer certificate issued by the APF, the Player was a non-amateur player. With this regard, it submits that it is *“aware of the obligation of every club that when entering into a contract with a player younger than 23 years of age, that the club must in an adequate way check and clear up whether this was the player’s first professional contract or a later one. However, in this case, a logical question is being asked i.e. how could have the Appellant known that the Paraguayan Football Association (APF) has delivered incorrect and incomplete documentation to the Croatian Football Federation (CFF) concerning the player D.?”*
18. The Sole Arbitrator observes that the copies of the Player’s international transfer certificate produced by the Appellant and/or by the Croatian Football Federation differ from the copy found in the FIFA file and/or furnished by the APF. On the documents presented by the Appellant and by its federation, the word “AFICIONADO” (*i.e.* “amateur”) has been crossed out, leaving only the terms “NON-AFICIONADO” (*i.e.* “non-amateur”). In the copy of the international transfer certificate produced by the APF as well as in the one found in the FIFA file, none of the terms “AFICIONADO” or “NON-AFICIONADO” have been crossed-out. With this regard, it can be pointed out that, in its proceedings before the FIFA Dispute Resolution Chamber, the Appellant has never tried to claim that the Player’s international transfer certificate designated him as a non-amateur.
19. The Sole Arbitrator also notes that the Croatian Football Federation actually sent to the CAS Court Office two copies of the international transfer certificate. In both documents, the term “AFICIONADO” was crossed out, but obviously with different pens.
20. It can actually be left open whether the international transfer certificate issued by the APF identifies the Player as a professional. As a matter of fact and as confirmed to the CAS Court Office by the Croatian Football Federation on 30 July 2007, the APF faxed to the latter the disputed international transfer certificate on 31 August 2004 at 23h34, that is unquestionably after the signature of the contract between the Player and the Appellant.
21. Under those circumstances, the Appellant cannot seriously allege that it relied on the sole international transfer certificate to determine whether the Player was a professional player or not.
22. As admitted by the Appellant in its appeal brief (see para. 17 hereabove), it is the responsibility of the new club to calculate the amount of the compensation for training and education. Consequently, the new club of the player shall find out the way the training compensation has to be calculated by taking into consideration the player’s career history. For this purpose, the new club shall, if necessary, take the assistance of the player in order to discharge this obligation (see FIFA Circular Letter No. 826 dated 31 October 2002, p. 4). In this respect, the Sole Arbitrator holds that the alleged lack of information provided by the parties involved does not release the Appellant from its obligation under the terms of the applicable FIFA regulations. If

the Appellant had exercised due diligence in following the Player's career, it could have learned about the fact that the Player in question had never signed an employment contract before he joined the Appellant. The lack of diligence cannot be applied for the Appellant's benefit.

23. Furthermore, the Sole Arbitrator also remarks that the Appellant had several opportunities to determine precisely the Player's status:
 - In its letter dated 26 August 2004 and addressed to the Respondent, the Appellant refers to some previous correspondence related to the Player's transfer. It implies that the parties had a chance to discuss the Player's situation before the signature of the contract dated 31 August 2004.
 - The Player arrived in Zagreb on 28 August 2004, *i.e.* more than three days before the signature of the employment contract. He was accompanied by the Respondent's authorised representative. It is hardly imaginable that during the negotiations, the Player's history was not mentioned. Otherwise, one cannot see on what basis the figures mentioned in article 3 of the contract dated 31 August 2004 were discussed or how the Appellant can agree to pay such important compensation without any information whatsoever on the Player.
 24. In this context, it appears clearly that if the Appellant had any doubt with regard to the Player's status, it had time to make further research, get written confirmation or declaration directly from the Respondent or from its authorized representative, who accompanied the Player to Zagreb.
- (2) In particular
25. According to article 3 par. 1 of the FIFA Regulations, "*A player's status shall be determined by the national association with which he is registered*".
 26. Pursuant to article 4 par. 1 of the FIFA Regulation, "*Every player designated as non-amateur by his national association shall have a written contract with the club employing him*".
 27. The APF confirmed in written to the FIFA Dispute Resolution Chamber as well as to the CAS Court Office that the Player had been registered with the Respondent as an amateur from 1 April 1997 to 6 February 2002, from 1 June 2002 until 5 August 2004 and on 31 August 2004, *i.e.* between the ages of 14 and 21.
 28. The APF also attested to the FIFA Dispute Resolution Chamber and to the CAS Court Office that no written contract could be found regarding D., while he was registered with the Respondent as an amateur player.
 29. In the view of the above, the Sole Arbitrator considers that the registration of the Player as an amateur with the Respondent from 1 April 1997 to 6 February 2002, from 1 June 2002 until 5 August 2004 and on 31 August 2004 is sufficiently demonstrated. In general, the party which 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 417). In the present case, the Appellant did not substantiate the alleged existence of a contract showing that the Player could have been a professional before the 31 August 2004.

30. On 31 August 2004, the Player signed his first employment contract with the Appellant. Article 1 of the said document states notably that *“The Club employ the Player as a professional”*. At the hearing, the Appellant also admitted that it paid a salary to D. and that the latter played in its team until the contract dated 31 August 2004 was terminated. Under such circumstances, the Sole Arbitrator is of the opinion that it cannot be questioned that there was an employer-employee relationship between the Appellant and the Player.

B. *Is the Respondent entitled to training compensation?*

31. Article 13 of the FIFA Regulations provides the following:

“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, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training”.

32. Pursuant to article 14 of the FIFA Regulations,

“When a player signs his first contract as a non-amateur, a sum of compensation shall be paid to the club(s) involved in the training and education of the player”.

33. According to article 15 of the FIFA Regulations,

“Compensation shall be paid each time a player changes from one club to another up to the time his training and education is complete, which, as a general rule, occurs when the player reaches 23 years of age”.

34. It has been established that the Player signed his first non-amateur contract with the Appellant on 31 August 2004. He was less than 21 years old when he was training and playing with the Respondent and was less than 23 years old when the latter club lodged a formal claim in front of FIFA for the training compensation.

35. The Appellant submitted that the Player was registered more than four times within the month of August 2004. According to the Appellant, this is contrary to the applicable FIFA Regulations. The Appellant is suggesting that the payment of the training compensation is not due because of the questionable multiple-registration of the Player. The Appellant’s submission is a distinct issue and therefore inappropriate to the extent it relates to the training costs incurred by the Respondent for the development of the Player concerned. In particular, the Appellant did not explain why the payment of the training compensation must be affected by the possibility for the new club to register or not a player and how such a condition derives from the above-quoted articles 13 to 15 of the FIFA Regulations.

36. Furthermore, the Player was, in the facts, effectively registered with the Appellant. In the case at hand, the fact that the Player was registered with the Appellant has never been challenged by anybody, by any association or by FIFA. The argument of the Appellant must be considered as irrelevant, which conclusion is underlined by the letter of the APF to the CAS Court office dated 26 July 2007.

37. On 26 July 2007 and regarding the Player's various transfers during the month of August 2004, the APF wrote the following to the CAS Court Office (as freely translated into English):

"I am writing to you (...) regarding the transfers of the player D. dated 31 August 2004.

Indeed, these transfers took place the 31 August 2004, and all of them are based on the regulations regarding the transfer of players of the Paraguayan Football Association. As you will note if you studied the record of transfers, on the 6 August 2004 the club Cerro Cora transferred the player on a temporary loan basis to the club Sport Club Colombia until the 31 December 2004. In order for this player to go back to his former club before the ending of the loan, Cerro Cora turned the temporary pass into definitive and Sport Club Colombia returned the same day to Cerro Cora the transfer in order for this to issue the International Transfer Certificate in favour of NK Zadar from Croatia. All the same 31 August.

Nevertheless, the two first transfers are only administrative with the only aim of returning the temporary transfer to the club owner of the federative rights of the player before the end of the loan".

38. The Sole Arbitrator concludes, on the basis of the above, that the Respondent is entitled to training compensation as provided by Chapter VII of the FIFA Regulations.

C. *What is the correct calculation of the training compensation?*

(1) The relevant provisions and guidelines

39. This case is primarily governed by the FIFA Regulations. For the implementation of the FIFA Regulations, the 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 Sole Arbitrator considers these Circular Letters to be relevant also for the interpretation of the FIFA Regulations (CAS 2003/O/527, p. 10; CAS 2004/A/560, p. 9; CAS 2004/A/686, p. 8).

40. The relevant provisions and guidelines for the calculation of the training compensation are the following:

Article 5 of the Regulations governing the Application of the FIFA Regulations

"1 For the purposes of calculating compensation, the training period starts at the beginning of the season of the player's 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday".

FIFA Circular Letter No 769 (page 7)

The FIFA Circular 769 provides that in the case of a transfer of a player from a country outside the European Economic Area (“EEA”) to a country outside the EEA *“whenever training compensation is due it shall be based on the costs of the country of the new club, in order to stimulate solidarity within the world of football. In other words, while taking the category of the club which has effectively trained the player, the new club will pay according to the cost standards prevailing in its own country.*

In this way, clubs will be discouraged from hiring young players from clubs in other countries merely on the grounds that training costs in these other countries are lower. Rather, all clubs should be encouraged to invest in training themselves. Furthermore, clubs which have the resources to hire football talent abroad, will be paying a foreign club according to their own standards”.

FIFA Circular Letter No 826 (page 2):

“Until a more definitive calculation system is put into place, FIFA has established the following indicative amounts on the basis of information received for all national associations on a confederation basis, also keeping in mind the many requests from interested parties for simplicity:

(...)

Europe:

- 1. Category: EURO 90,000*
- 2. Category: EURO 60,000*
- 3. Category: EURO 30,000*
- 4. Category: EURO 10,000*

(...)

South America:

- 1. Category: USD 50,000*
- 2. Category: USD 30,000*
- 3. Category: USD 10,000*
- 4. Category: USD 2,000*

These amounts will be used when applying the provisions contained in Chapter VII of the FIFA Regulations for the Status and Transfer of Players (hereafter “Basic Regulations”), as well as Chapter III of the Regulations governing the Application of the Regulations for the Status and Transfer of Players (hereafter “Application Regulations”), together with circular letters nos. 769 and 799, subject to the simplifications outlined below”.

Article 7 par. 1 to 3 of the Regulations governing the Application of the FIFA Regulations:

“The compensation for training and education shall be obtained by multiplying the amount corresponding to the category of the training club for which the player was registered by the number of years of training from 12 to 21.

To ensure that training compensation for very young players is not set at unreasonably high levels, the amount for players aged 12 to 15 shall be based on the training and education costs for category 4.

As a general principle, compensation for training is based on the training and education costs of the country in which the new club is located”.

(2) The period during which the Player was trained by the Respondent and for which compensation is due

41. The Sole Arbitrator holds that the Respondent has established that it provided proper training and education to the Player from 1 April 1997 to 6 February 2002, from 1 June 2002 until 5 August 2004 and on 31 August 2004.

42. As the Player was born on 29 October 1982, he turned 21 during the year 2003. Therefore and based on article 5 of the Regulations governing the Application of the FIFA Regulations, no compensation is due with regard to the year 2004. Appropriately, the Respondent does not try to claim any training compensation for the periods while the Player was loaned (CAS 2004/A/560 p. 13).

43. In conclusion, the Sole Arbitrators considers that the training period for which compensation is due are the following:

- three quarters of the year 1997,
- years 1998, 1999, 2000 and 2001;
- the months of January, June, July, August, September, October, November, December 2002 (8 months);
- the year 2003.

(3) Categorisation of the Respondent and calculation of the compensation

44. As it results from article 7 par. 3 of the Regulations governing the Application of the FIFA Regulations, the category of the former club and the amount corresponding to the same category in the new club's Confederation, which is UEFA in the present case, apply (CAS 2003/O/505, p. 20; CAS 2003/O/469, p. 33).

45. However, on the basis of article 7 par. 2 of the Regulations governing the Application of the FIFA Regulations, and with regard to the fact that in 1997, the Player turned 15 years old, the calculation of the compensation "shall be based on the training and education costs for category 4".

46. According to the APF and under the terms of the FIFA Circular Letter No 826, the Respondent falls into category 3 from 1998 to 2001 and into category 4 from 2002 to 2004.

47. Pursuant to the FIFA Circular Letter No 826, compensation for category 3 in Europe amounts EUR 30,000 and for category 4 EUR 10,000.

48. The calculation of the training compensation is as follows:

Three quarter of the year 1997	- category 4	EUR 7,500
Year 1998	- category 3	EUR 30,000
Year 1999	- category 3	EUR 30,000

Year 2000	- category 3	EUR 30,000
Year 2001	- category 3	EUR 30,000
8 months in year 2002	- category 4	EUR 6,666
Year 2003	- category 4	<u>EUR 10,000</u>
Training compensation		EUR 144,166

49. Based on the foregoing, the Sole Arbitrator concludes that the training compensation to be awarded to the Respondent shall thus amount to EUR 144,166.
50. With regard to the interest and in the absence of a specific contractual clause, the Sole Arbitrator can only apply the legal interest due pursuant to article 104 of the Swiss Code of Obligations. This article provides that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum (CAS 2003/O/486, p. 23).
51. Regarding the dies a quo for the interest, the FIFA Dispute Resolution Chamber ordered the Appellant to pay the financial compensation to the Respondent within 30 days as of notification of its decision.
52. It follows that the due date is 30 days after the 18 December 2006. As a consequence, the interest of 5% shall be incurred as of 18 January 2007.

D. Are there any reasons to adjust the training compensation?

53. According to the Appellant, the amount of training compensation awarded is excessive. Under the terms of the FIFA Circular Letter No 826, dated 31 October 2002, the Sole Arbitrator can adjust the amounts for training compensation so as to reflect the specific situation of the case.
54. Pursuant to article 42 par. 1(b)(iv) of the FIFA Regulations, the Dispute Resolution Chamber “shall have discretion to adjust the training fee, if it is clearly disproportionate to the case under review”. However, the general principle of equal treatment of the member federations requires that such adjustments must be based only on criteria established by the applicable rules and regulations (CAS 2003/O/527, p. 14; CAS 2006/A/1027, p. 18).
55. The FIFA Circular Letter No 826, page 2, last paragraph, provides the following:
“Any party that objects to the result of a calculation based on the rules on training compensation is entitled to refer the matter to the Dispute Resolution Chamber. The Chamber will then review whether the training compensation fee calculated on the basis of the indicative amounts and the principles of the revised regulations, as simplified below, is clearly disproportionate to the case under review in accordance with Art. 42.1.b.(iv) of the Basic Regulations, while taking into account the indicative nature of these amounts. Whenever particular circumstances are given, the Dispute Resolution Chamber can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary, such as invoices, training centres, budgets, etc.”.

56. It follows that the club objecting to a training compensation calculated on the basis of the indicative amounts mentioned in the FIFA Circular Letter No 826 is entitled to prove that such compensation is disproportionate on the basis of concrete documents, such as invoices, costs of training centers, budgets, etc. In the absence of sufficient evidence, the indicative amount would apply (CAS 2003/O/527, p. 14; CAS 2004/A/560, p. 15).
57. The Sole Arbitrator holds that the Appellant has not proven that the effective costs incurred by the Respondent for the training and education of the Player were lower than the costs calculated on the basis of the indicative amounts mentioned in the FIFA Circular Letter No 826.
58. The Appellant argued that the contractual period was very short and that it was provided with misleading information as to the Player's registration history and skills. The Appellant's submissions do not constitute suitable criteria to evaluate the training costs of the Respondent. The latter cannot be held responsible nor suffer from the consequences of the Appellant's failure to act with the prudence that a reasonable professional club would exercise when hiring a less than 23 years old amateur player (CAS 2006/A/1027, p. 19).

The Court of Arbitration for Sport rules:

1. The appeal of NK Zadar against the decision issued on 25 August 2006 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued on 25 August 2006 by the FIFA Dispute Resolution Chamber is confirmed.
3. NK Zadar is ordered to pay Club Cerro Corá the amount of EUR 144,166 (one hundred forty-four thousand and one hundred sixty six Euros), with interest at a rate of 5% o as of 18 January 2007.
4. (...).
5. (...).
6. All other or further claims are dismissed.