Arbitration CAS 2006/A/1189 IFK Norrköping v. Trinité Sports FC & Fédération Française de Football (FFF), award of 24 May 2007

Panel: Prof. Massimo Coccia (Italy), Sole Arbitrator

Football
Training compensation
Estoppel from contending that an employment contract did not enter into force
Absence of evidence of the waiver to obtain training compensation
Role of the length of the contractual relationship in the awarding of training compensation

1. **When a club hiring a player acts as if the employment agreement was fully in force, requests an ITC and registers the player with its national federation, it acts as if it is prepared to accept the payment of training compensation to the former club. Based on the principle of *venire contra factum proprium*, the new club is estopped from contending that the employment agreement did not enter into force and that it never had any right over the player.**

2. **The right to training compensation arises directly from the rules of FIFA and not from a private agreement between the interested clubs. Such rules were adopted by FIFA having in mind the general objectives to support grassroots football and to improve football talent by rewarding clubs for the worthy work done in training young players. In order to persuade a judging body that a grassroots club has waived its right to obtain training compensation, a professional club must therefore substantiate its allegation with truly compelling evidence. Indeed, a waiver of a right can never be assumed lightly. In the absence of an express written waiver, there is not sufficient evidence to conclude that a grassroots club renounced to the economic compensation provided by the FIFA rules.**

3. **According to Art. 14 of the 2001 Transfer Regulations, the signature of the player's first professional contract is the only requirement triggering the right of the training club(s) to claim training compensation. The FIFA rules do not set out any minimum length of the contractual relationship between the hiring club and the hired player.**

The Appellant IFK Norrköping (hereinafter "Norrköping" or the "Appellant") is a professional football team affiliated with the Swedish Football Federation ("SFF"). According to the information provided by the SFF in connection with the FIFA categorization of clubs, Norrköping belongs to Category 3.

The Respondent Trinité Sports FC (hereinafter "Trinité" or "Respondent Club") is an amateur football team affiliated with the French Football Federation. According to the information provided by the French Football Federation in connection with the FIFA categorization of clubs, Trinité belongs to Category 4.

The Respondent Fédération Française de Football ("FFF") is the French Football Federation, affiliated to FIFA.

The French player M., born in 1984 (hereinafter "the Player"), has been registered with the club Trinité as an amateur from the season 1992-1993 until the season 1999-2000, and then for the season 2004-2005.

On 30 March 2005 the Player and Norrköping signed an employment agreement for a period from 1 April 2005 until 15 September 2005 (hereinafter the "Employment Agreement"). The agreed monthly salary amounted to 18,000 Swedish Krowns ("SEK"), equivalent to approximately 2,000 Euro, in addition to bonuses related to results.

Pursuant to Sections 14-16 of the Employment Agreement, the effectiveness of the contract was subject to the following conditions precedent:

> *"§ 14 This contact is only valid if IFK Norrköping and The players former club agreed concerning the transfer.*
>
> *§ 15 This contract is only valid if and when the player have been approved in the medical examine by the medical expertise in the club.*
>
> *§ 16 This contract is only valid when the conserned fotball federation appooved the players International Certificater for the player and that the player is registrated to play for the club* [sic]*".*

Moreover, pursuant to Section 18 of the Employment Agreement, Norrköping had *"the right one sided to cancel this contract 2005-06-30"*.

Subsequently, on an unknown date, the Player and Norrköping signed a sort of short addendum to the Employment Agreement, according to which the Player expressly acknowledged that he was *"fulled awared of that this contract no is valid due to paragraph 14 in the contract* [sic]*"* and that *"In that case IFK Norrköping receive a confirmation that the players former club not have any demands what so ever before 2005-06-15 the contract is still valid* [sic]*"*.

On 13 April 2005, following a request by Norrköping through the Swedish Football Association, the FFF issued an International Transfer Certificate ("ITC") for the Player. On the same day, the Swedish Football Association registered the Player for Norrköping.

On 17 June 2005, Norrköping communicated to the Player the termination of the Employment Agreement with a document (hereinafter "Termination Notice") drafted in the following terms: *"The Club IFK Norrköping is cancelling the contract signed 2005-03-30 due to paragraph 18 in the contact. The Player M. is full awarded of the meaning of this agreement* [sic]*"*. The Player signed at the bottom of the Termination Notice.

The Player has been registered for Norrköping until 13 February 2006, when the Swedish Football Association issued an ITC in favour of the German Football Association, for a transfer to the German club SV Elversberg.

There is no conclusive evidence on file as to whether the Player has played at all during the period from 17 June 2005 to 13 February 2006. The Appellant alleges that the Player went back to France and played again with the Respondent Club, whereas both Trinité and, more significantly, the FFF deny it.

On 22 August 2005, Trinité filed a complaint with the Dispute Resolution Chamber of FIFA (hereinafter "DRC") claiming that Norrköping had to pay training compensation in the amount of EUR 60,000 because of the transfer due to the Player's signing his first professional contract with Norrköping.

On 25 August 2006, the DRC adopted its decision (hereinafter the "Appealed Decision"). The DRC upheld Trinité's claim to training compensation and ordered Norrköping to pay EUR 60,000 within 30 days from the notification of the Appealed Decision, setting an interest rate of 5% per annum after the expiry of that deadline.

FIFA notified the Appealed Decision to the interested clubs on 14 November 2006.

On 4 December 2006, in accordance with Article 61.1 of the FIFA Statutes, Norrköping filed a Statement of Appeal with the CAS together with three (3) exhibits against the Appealed Decision, naming as Respondents both Trinité and the FFF.

On 11 April 2007, the CAS informed the parties that the Sole Arbitrator had decided, pursuant to Article R57 of the Code of Sports-related Arbitration (hereinafter the "Code"), not to hold a hearing. The parties were also given a term until 20 April 2007 to submit any further comments and documents connected with the case.

The parties did not make use of this opportunity and failed to produce any final submission within the deadline given by the Sole Arbitrator.

The Appellant claims that no economic compensation must be paid to Trinité. In particular, the Appellant argues that the Employment Agreement was conditioned on the agreement with Trinité concerning the transfer (see Section 14 of the Employment Agreement, *supra* at 2.4). As there was no agreement with Trinité on the transfer, the Employment Agreement did not become effective and Norrköping never had any right over the Player.

The Appellant submits that, in case a training compensation is to be awarded, the amount should be less than EUR 60,000.

For those reasons, the Appellant submitted to the CAS the following plea for relief:

"a) that no economic compensation shall be paid or at least

b) that the amount shall be heavily deducted".

Trinité did not submit any brief to the CAS. However, its position has been clearly set out in front of the DRC. In short, Trinité argues that the Player was a true amateur, and was in fact registered as such, when he played for them because the whole club is an amateur club and cannot afford to pay salaries to players. Then, relying on the FFF's records, Trinité denies that the Player ever went back to play with them after he was hired by Norrköping. Trinité also denies to have ever verbally promised to waive its right to an economic compensation.

For those reasons, Trinité requests the application of the pertinent FIFA rules and claims the payment of training compensation in the amount of EUR 60,000.

According to the communication sent on 16 January 2007, the FFF contends that the dispute at stake concerns the two clubs only and that the FFF is not to be considered as a party to this CAS arbitration. Coherently, the FFF did not submit any brief.

LAW

Jurisdiction and standing to be sued

1. The jurisdiction of the CAS, which is not disputed, derives from Arts. 59-61 of the FIFA Statutes and R47 of the Code.

2. It follows that the CAS has jurisdiction to decide the present dispute.

3. However, the FFF requests not to be considered as a party to this arbitration.

4. The Sole Arbitrator notes that the FFF does not object to the jurisdiction of the CAS but it denies, in essence, its "standing to be sued", i.e. it denies to have a sufficient stake in this dispute to be summoned as a respondent.

5. The Sole Arbitrator notes that the FFF was not a party in the dispute in front of the DRC, that the Appellant is not claiming anything against the FFF and that the FFF has nothing at stake in this dispute. Accordingly, the Sole Arbitrator finds that the Appellant erred in summoning the FFF as a respondent because the FFF lacks standing to be sued in connection with this case. As a result, the Sole Arbitrator holds that the FFF is not to be considered as an actual respondent in this case.

Applicable law

6. Art. R58 of the Code reads as follows:

"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".

7. Then, art. 60, para. 2, of the FIFA Statutes provides as follows:

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

8. The Sole Arbitrator remarks that the "applicable regulations" set forth by Art. R58 of the Code are indeed all FIFA rules material to the dispute at stake.

9. Then, the Sole Arbitrator notes that the Employment Agreement entered into by the Appellant and the Player does not contain an express choice of law. However, Art. 60 para. 2, of the FIFA Statutes contains an election of Swiss law, which is deemed to be applicable in addition to the FIFA Regulations. According to legal literature and to CAS jurisprudence, such a choice of law, by reference to the FIFA Regulations, is both admissible and binding on the parties (see CAS 2004/A/574; TAS 2005/A/983 & 984).

10. Therefore, the Sole Arbitrator holds that the dispute must be decided in accordance with FIFA statutes and regulations and, complementarily, with Swiss Law.

11. In particular, with regard to the FIFA regulations, the Sole Arbitrator notes that under Art. 26, para. 2, of the current (2005 edition) Regulations for the Status and Transfer of Players entered into force on 1 July 2005, as subsequently modified in accordance with the FIFA Circular no. 995 of 23 September 2005 (hereinafter the "2005 Transfer Regulations"), this case must *"be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*. As the Employment Agreement was signed on 30 March 2005 and terminated on 17 June 2005, while the ITC was issued on 13 April 2005 (see *supra*), the Sole Arbitrator notes that the relevant contract was signed, and the disputed facts arose, prior to 1 July 2005. Accordingly, the Sole Arbitrator finds that the substantive issues of this case are governed by the training compensation rules set forth by the 2001 edition of the FIFA Regulations for the Status and Transfer of Players (hereinafter the "2001 Transfer Regulations").

Discussion on the merits

A. The entry into force of the Employment Agreement of 30 March 2005

12. The Appellant submits that, pursuant to the condition precedent set forth by Section 14 (*supra*), the Employment Agreement never entered into force because the two concerned clubs never reached an agreement on the transfer. Therefore, the first issue to be determined by the Sole Arbitrator is whether the Employment Agreement became legally effective.

13. The Sole Arbitrator notes that the Appellant's conduct contradicts its submission. First of all, the Appellant asked for an ITC from the FFF and, as soon as the ITC was issued, it registered the Player with the SFF as a professional player (as certified by the SFF in its letters dated 17 May 2005 and 8 June 2006). Then, on 17 June 2005 the Appellant terminated the Employment Agreement making reference to Section 18, i.e. to the contractual provision giving the club the right to unilaterally withdraw from the contract (see *supra*). Needless to say, a party may withdraw from a contract only if the contract has already entered into force. Furthermore, the Appellant itself admitted that the Player *"has had an agreement with IFK Norrköping between 2005-04-01 and 2005-06-17, i.e. two months and 17 days"* (letter of 7 April 2006 to the DRC).

14. Given the above described Appellant's conduct, it seems to the Sole Arbitrator that there is compelling evidence that Norrköping disregarded the condition set forth by Section 14 and decided to implement the Employment Agreement and to include the Player in its professional roster. In other words, Norrköping acted as if the Employment Agreement was fully in force and, thus, as if it was prepared to accept the payment of training compensation to Trinité. In order to act coherently with its submission, the Appellant should not have requested an ITC and should not have registered the Player with the SFF until it was in possession of an irrefutable written pledge by Trinité to waive its right to the training compensation. However, this is not the course of action taken by Norrköping.

15. Therefore, in the Sole Arbitrator's view, the Appellant is estopped from contending that the Employment Agreement did not enter into force and that it never had any right over the Player. In reaching this conclusion, the Sole Arbitrator relies on the principle of *venire contra factum proprium*, a doctrine firmly established in Swiss law and already applied in previous CAS arbitration proceedings (see e.g. CAS 98/200; CAS 2006/A/1086).

16. As a result, the Sole Arbitrator holds that this Appellant's submission fails.

B. The Player's status before the transfer

17. The Appellant alleges that the Player had a non-amateur status when he played for Trinité because he was receiving some remuneration. However, the Appellant did not submit any evidence supporting this allegation. As the Player was registered by Trinité with the FFF as an amateur player, the Sole Arbitrator must conclude, absent any evidence to the contrary, that the Player did sign his first professional contract with the Appellant.

C. The Trinité's President alleged pledge

18. With regard to the Appellant's argument that it relied on the assurance given by the Player's agent that Trinité was not going to claim any compensation, the Sole Arbitrator notes that the agent's representations might give rise to a cause of action against the agent but they cannot be opposed to Trinité. Also, the Sole Arbitrator is not persuaded by the statements submitted by the Player's agent and by an interpreter with regard to the verbal pledge not to claim any training compensation which, allegedly, the President of Trinité gave to Norrköping's representatives.

19. The Sole Arbitrator notes that the right to training compensation arises directly from the rules of FIFA and not from a private agreement between the interested clubs. Such rules were adopted by FIFA having in mind the general objectives to support grassroots football and to improve football talent by rewarding clubs for the worthy work done in training young players. In view of that, it seems to the Sole Arbitrator that, in order to persuade a judging body that a grassroots club has waived its right to obtain training compensation, a professional club must substantiate its allegation with truly compelling evidence. Indeed, a waiver of a right can never be assumed lightly.

20. Accordingly, the Sole Arbitrator is of the opinion that, in the factual context of this specific case, only a written pledge issued by the French club could be deemed as persuasive evidence. In fact, according to the evidence submitted by the Appellant itself, Norrköping's representatives sought at length, unsuccessfully, to obtain from Trinité such written pledge, thus proving that both parties knew well that only a written document could be deemed as persuasive evidence of the waiver.

21. The Sole Arbitrator is thus of the view that, in the absence of an express written waiver on record, there is not sufficient evidence to conclude that Trinité renounced to the economic compensation provided by the FIFA rules.

22. As a result, the Sole Arbitrator holds that Trinité has retained its right, vis-à-vis the Appellant, to the training compensation for the Player.

D. The length of the Player's contractual relationship with Norrköping

23. The Sole Arbitrator is also not persuaded by the Appellant's argument that the Player has been registered with Norrköping for too short a period and that the Player, after the termination of the Employment Agreement, went back to Trinité.

24. According to Art. 14 of the 2001 Transfer Regulations, the signature of the player's first professional contract is the only requirement triggering the right of the training club(s) to claim training compensation. The FIFA rules do not set out any minimum length of the contractual relationship between the hiring club and the hired player. The alleged return of the Player to Trinité – besides not being supported by convincing evidence – is thus legally irrelevant.

25. The Sole Arbitrator remarks that a club wishing to grant a professional contract to a young player coming from another country should carefully evaluate – before signing the contract, obtaining the ITC and registering the player with its football association – whether that Player carries a "price tag" due to the FIFA transfer regulations, and the convenience of that price in light of the player's worth. It seems to the Sole arbitrator that the Appellant was negligent in this respect.

26. As a result of the failure of the above mentioned Appellant's submissions, the Sole Arbitrator finds that the Appellant must pay training compensation to the Respondent Club.

E. The amount of compensation owed by Norrköping to Trinité

27. The Player, born in 1984, was trained by Trinité from the season 1992-1993 until the season 1999-2000, and then for the season 2004-2005. In the Spring of 2005, at the age of 20, the Player signed his first professional contract with Norrköping.

28. According to Art. 13 of the 2001 Transfer Regulations a *"player's training and education takes place between the ages of 12 and 23"*. Therefore, training compensation for the Player is owed to Trinité for the seasons 1996-1997, 1997-1998, 1998-1999, 1999-2000 and 2004-2005.

29. The Sole Arbitrator notes that the transfer occurred within the EU/EEA area and that the Player moved from a Category 4 club to a Category 3 club. Therefore, according to the applicable FIFA rules – in particular, the Application Regulations of 2001 and Circular no. 959 of 16 March 2005 – Norrköping should pay EUR 10,000 (Category 4) per annum for the period 1996-2000, when the Player was 12 to 15 years old. Then, Norrköping should pay EUR 20,000 (i.e. the average between Category 3 and Category 4) for the season 2004-2005.

30. As a result, the Sole Arbitrator upholds the DRC's assessment of EUR 60,000 as the training compensation for the Player owed by Norrköping to Trinité.

31. The Sole Arbitrator finds also appropriate, in accordance with Art. 104 of the Swiss Code of Obligations, the DRC's determination to fix an interest rate of 5% per annum if the sum of EUR 60,000 is not paid within the deadline of 30 days from the notification of the DRC's decision (notification which occurred on 14 November 2006).

32. In conclusion, the Sole Arbitrator holds that Norrköping must pay to Trinité EUR 60,000 plus a yearly interest rate of 5% as from 14 December 2006 until the date of effective payment.

The Court of Arbitration for Sport rules:

1. The appeal submitted by the club IFK Norrköping against the decision issued on 25 August 2006 by the Dispute Resolution Chamber of FIFA is dismissed.
2. The club IFK Norrköping is ordered to pay to the club Trinité Sports FC the amount of EUR 60,000 (sixty thousand Euro), plus 5% per annum interest on this amount as from 14 December 2006 until the date of full settlement.

(…)