



Arbitration CAS 2006/A/1167 FK Sarajevo v. DSC Arminia, award of 29 January 2007

Panel: Prof. Peter Grilc (Slovenia), Sole Arbitrator

Football

Training compensation

Differentiation in the handling of a claim for training and education and a claim for transfer fee

Interpretation of the wording of a letter

Determination of the period of training for the calculation of training compensation

Categorisation of clubs for the calculation of training compensation

1. Under the FIFA Regulations for the Status and Transfer of Players, the claims for transfer fee and for training and education are dealt with separately. Compensation for the training and education of a player should be paid whether or not compensation for early termination of contract could also be ordered or agreed upon. Compensation for training and education, on the one hand, and transfer fee, respectively compensation for breach of contract, on the other hand, are therefore two different issues, which have to be handled distinctly.
2. A letter sent by a club to its former player containing the wording “*DSC Arminia will not raise any claims in connection with transfer compensation*” should be interpreted as it reads, that is, as a communication from a legal entity (DSC Arminia) to its former player, who received a confirmation that his transfer is free of claims concerning the transfer. The new club is thus not entitled to rely upon such communication, which is not addressed to it and which, therefore, does not create any right in its favour to object to the former club’s claim for training and education. The fact that the latter confirmed to its player that it renounced its claim connected with the transfer fee does not mean that it renounced to that connected with training and education.
3. FIFA Circular no. 769 specifies that in order to calculate the training compensation, “*only years of effective training may be taken into account*”, making also reference to “*full years of proper and proven training*”. According to FIFA Circular no. 801, the end of a player’s training and/or education, is a question of proof, which is at the burden of the club that is claiming this fact. A player who regularly performs for the club’s “A” team could be considered as having accomplished his training period, but there may also be other indications hereto. The decision on this will have to be taken on a case-by-case basis. This principle will also apply to apprentice professionals or players under a scholarship agreement.
4. In accordance with Art. 7 para. 1. of the FIFA Regulations Governing the Application of the Regulations for the Status and Transfer of Players, 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. Pursuant to Art. 7 para. 3., as a general principle, compensation for training must be calculated on the basis of the country in which the new club is located. The exception provided by Art. 7 para 4, according to which the costs of the former club must be taken into consideration, only applies whenever both involved clubs are located in the EU/EAA area.

FK Sarajevo (hereinafter “the Appellant”) is a football club with its registered office in Sarajevo, Bosnia and Herzegovina and a member of the Football Federation of Bosnia and Herzegovina (Nogometni / fudbalski savez Bosne I Hercegovine), which is affiliated with FIFA.

DSC Arminia (hereinafter “the Respondent”) is a football club with its registered office in Bielefeld, Germany. It is affiliated to the German Ligaverband, which is a member of the German Football Federation (Deutscher Fussball-Bund), which in turn is affiliated with FIFA.

This is an appeal by FK Sarajevo against the decision issued on 30 May 2006 by the FIFA Dispute Resolution Chamber (hereinafter “the FIFA Decision”), whereby the Appellant was ordered to pay EUR 180,000 to DSC Arminia Bielefeld, in connection with the training compensation related to the football player M. (hereinafter “the Player” or “M.”).

M. was born in 1984 and according to the relevant Player’s passport remitted by German Football Federation, was registered with the Respondent from 11 July 2002 until 30 June 2004, that is for two sporting seasons, between ages of 18 and 20, as a non-amateur player. On 30 August 2004, the Player signed a non-amateur contract with a new club, the FK Sarajevo.

On 4 April 2005 DSC Arminia lodged a formal claim in front of FIFA and requested from the FK Sarajevo training compensation in accordance with Chapter VII of the FIFA Regulations for the Status and Transfer of Players (edition 2001, hereinafter “the FIFA Regulations”). FK Sarajevo in its reply to the claim stated that DSC Arminia had confirmed in a letter of 30 August 2004 that it would not claim any financial compensation on the basis of the transfer of the Player from DSC Arminia to FK Sarajevo and that it was therefore of the opinion that no training compensation was owed to the former club.

The contents of the aforementioned letter, addressed to the Player reads as follows, according to the FIFA Decision:

“hiermit bestätigen wir (the Claimant) Ihnen (Spieler Mirnel Sadovic), dass Ihr Vertrag mit dem DSC Arminia Bielefeld am 30.6.2004 ausgelaufen ist und das Vertragsverhältnis nicht verlängert wird. Der DSC Arminia Bielefeld wird keine Ansprüche im Zusammenhang mit einer Transferentschädigung erheben”.

With regard to the letter, DSC Arminia maintained that it did not renounce its right to request training compensation from FK Sarajevo but only confirmed therein that it would not claim for any transfer compensation since the contract with the Player had anyway expired on 30 June 2004. In its final

position FK Sarajevo reiterated its position of the conviction that it did not owe any training compensation to DSC Arminia.

As the parties could not find an amicable solution, DSC Arminia filed a claim with the FIFA Dispute Resolution Chamber (hereinafter “the DRC”). On 30 May 2006 the DRC issued the Decision stating the following, in relevant parts:

- The DRC acknowledged that, on the one hand, DSC Arminia claimed for training compensation based on the number of years the Player had spent training with that club while, on the other hand, FK Sarajevo contended that DSC Arminia was not entitled to any training compensation, based on the letter dated 30 August 2004 issued by DSC Arminia to the Player, according to which the German club had waived all financial compensation for the transfer of the Player.
- According to the aforementioned letter, which the Chamber considered as the crucial element in the dispute at stake, DSC Arminia informed the Player that their contractual relationship has expired and that the employment contract would not be extended. The DRC considered that DSC Arminia had informed the Player that it would not claim for transfer compensation. However, the DRC determined that such renouncement by DSC Arminia did not affect or include its entitlement to receive training compensation in accordance with the FIFA Regulations. It further pointed out that the right of a club to claim for transfer compensation from the player’s new club is clearly to be distinguished from a club’s entitlement to obtain training compensation. The DRC concluded that DSC Arminia was entitled to training compensation for the training and education of the Player as established in Chapter VII of the FIFA Regulations.
- The proper compensation was calculated in accordance with the parameters provided by the FIFA Regulations and by the FIFA Circular no. 826. The DRC based the calculation on Art. 5 para. 1. of the FIFA Regulations and established that DSC Arminia was entitled to training compensation for the seasons 2002/2003 and 2003/2004. Furthermore, the DRC held that, pursuant to Art. 7 para. 3 and 4 of the FIFA Regulations Governing the Application of the Regulations for the Status and Transfer of Players (hereinafter the “FIFA Application Regulations”) and in accordance with point 2b(i) of the FIFA Circular no. 769, whenever a player is transferred from a country inside EU or the EEA to a country outside the EU or the EEA, the compensation should be calculated based on the costs of the country of the new club, applying the category of the club which effectively trained the player. Finally, the DRC emphasized that Art. 5 para. 5 of the FIFA Application Regulations was not applicable, since the case at hand does not involve two clubs located in the EU/EEA area.
- On the basis of the FIFA Circular no. 826, the DRC determined that DSC Arminia was a first division club, belonging thus to the category 1. The corresponding indicative amount for the annual costs of training provided by such club is EUR 90,000. The DRC concluded that the compensation due to the German club for the training of the player during two seasons amounted to EUR 180,000.

On 11 October 2006, the Appellant lodged the appeal against the Decision.

The Appellant's submission, in essence, may be summarized as follows:

- The DRC wrongly concluded that DSC Arminia has renounced only to the transfer compensation and not to a training compensation.
- DSC Arminia was not entitled to any transfer compensation, since its contract with the Player expired on 30 June 2004
- Therefore, the only compensation to which DSC Arminia could renounce was the training compensation. The Appellant gave it up in its letter of 30 August 2004, mentioning expressly that the contract with the Player has expired on 30 June 2004 and that the contractual relationship had not been extended. The Appellant's position is that the DRC wrongly interpreted the wording of that letter. The Appellant contends that *"DSC Arminia has not renounced the right on "transfer compensation", than "any claims in connection with a transfer compensation". A training compensation is just one of compensations connected with a transfer compensation"*. The Appellant's interpretation of the letter of 30 August 2004 is that the Respondent *"will not raise any claims [...], including a training compensation"* and that the Respondent had not specified that it would not raise any claim relating only to transfer compensation, in which case the training compensation would have clearly been excluded from the Respondent's renunciation.

The Respondent submitted a written answer to CAS, dated 16 November 2006, with the following main arguments:

- Since the Player signed a non-amateur contract with FK Sarajevo, the Respondent was entitled to claim for training compensation for the Player towards FK Sarajevo corresponding to FIFA formalities.
- The argument of the Appellant in its statement of appeal is not conclusive. Both parties agree that the Respondent has no right to ask for the transfer compensation. This is expressly acknowledged by the Respondent itself in its letter of 30 August 2004. However, the Respondent has never renounced to its claim for training compensation for the Player. In its view, there was no direct connection between transfer compensation and training compensation and the Appellant's interpretation that training compensation was part of the compensations connected with a transfer compensation is not acceptable.
- The Respondent asks CAS to reject the appeal and claims for the payment of EUR 180,000 as a training compensation for the Player.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Art. 60 ff. of the FIFA Statutes (edition August 2006) and from Art. R47 of the Code of Sport-related arbitration (hereinafter

the “Code”). It is further confirmed by the order of procedure duly signed by the parties. Consequently, CAS has jurisdiction to decide the present dispute.

Applicable law

2. Art. 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”.
3. Art. 60 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA and, additionally, Swiss law.
4. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily.

Admissibility and hearing

5. The appeal was filed within the deadline provided by Art. 61 of the FIFA Statutes and indicated in the Decision, i.e. within 21 days after notification of such decision. It follows that the appeal is admissible, which is also undisputed.
6. With regard to the Appellant’s submission dated 27 November 2006, filed in response to the answer, the Sole Arbitrator, taking into consideration that the Respondent disagreed to such filing by letter of 30 November 2006, has considered that there are no exceptional circumstances which could allow the Appellant to produce further arguments after the expiry of the deadline for the appeal brief. Therefore, such submission shall be disregarded, in accordance with Art. R56 of the Code.
7. As to the hearing, the Sole Arbitrator informed the parties of the case with a letter of 20 December 2006 that he was prepared to issue the award without holding a hearing, as he deemed himself sufficiently informed by the parties’ written submissions (Art R57 of the Code). The parties were invited to express their views accordingly before 8 January 2007. In a letter of 5 January 2007 the Appellant insisted that a hearing be held, with the sole purpose *“to reach the just decision in the case”*. The Respondent has not expressed any views regarding the holding of a hearing. The Sole Arbitrator confirms that he deems himself sufficiently informed by the parties’ written submissions, taking also into consideration that neither party has relied upon the oral testimony of any witness and that this is a legal rather than a factual dispute. By letter of 9 January 2007 from the CAS Court Office, the Sole Arbitrator therefore informed the parties that the hearing would be waived and that the present award would be issued on the basis of the parties written submissions.

Main Issues

A. Introduction / Relevance of FIFA Circulars and Annexes thereto

8. This case is governed primarily by the FIFA Regulations. For the implementation of the FIFA Regulations, the FIFA has issued a number of Circular Letters, to which Annexes were attached in individual cases. Although these Circular Letters and Annexes 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 in that respect and also within the meaning of soft law for the interpretation of the FIFA Regulations. Circular Letters no. 769, no. 801, no. 826 (together with respective annex), no. 867, no. 959 (together with respective annex) and no. 995 have been identified and checked. In the present case the following issues must be deliberated and resolved by the Sole Arbitrator.

B. Nature and content of the letter of 30 August 2004

9. In such letter of 30 August 2004 addressed to the Player, the Respondent states: *"We hereby we confirm to you that your contract with DSC Arminia Bielefeld expired on 30.6.2004 and the contractual relation is not extended. DSC Arminia will not raise any claims in connection with transfer compensation"*. Contrary to what is erroneously mentioned in the Decision, such letter was actually dated and sent on 30 August 2004 and not on 30 June 2004. In any event, in the Sole Arbitrator's view, such mistake is not material and had no influence on the decision reached by the DRC.
10. It is undisputed that the letter was sent to the Player, not to the Appellant. The burden of proof concerning the circumstances in which the letter was written and sent, lies on the Appellant. The Appellant did not demonstrate neither prove whether the letter was issued spontaneously by the Respondent simply to inform the Player or whether it was issued upon request of a third party. Therefore the letter should be interpreted as it reads.
11. The training compensation is defined in Chapter VII of the FIFA Regulations, entitled *Training compensation for young players*. Art. 13 of the FIFA Regulations reads as follows:
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.
12. The Appellant indisputably acknowledged in the appeal that the only compensation that the Respondent might be entitled to is the compensation for the training of the Player. On the other hand, the Respondent, in its letter of 30 August 2004, informed the Player that it would not claim for any transfer fee from the Player's possible new club. There is thus no dispute on the principle that the Respondent actually trained the Player during the time the latter was playing in Germany. The core issue between the parties is therefore whether the "information" supplied

by the Respondent to the Player by letter of 30 August 2004, not to raise any claim relating to transfer compensation, may affect the Respondent's entitlement to training compensation, as provided in the FIFA Regulations.

13. Under the FIFA Regulations, the claims for transfer fee and for training and education are dealt with separately. As already said, the compensation for the training and education of players is regulated in chapter VII of the FIFA Regulations. The transfer fee very often derives from the early termination of a player's contract, the consequences of which are described at chapter VIII of the FIFA Regulations, namely at Art 21 and following. Art. 18 of the FIFA Regulations expressly provides that compensation for the training and education of a player should be paid whether or not compensation for early termination of contract, in the sense of Art. 22 of the FIFA Regulations, could also be ordered or agreed upon. That means clearly that compensation for training and education, on the one hand, and transfer fee, respectively compensation for breach of contract, on the other hand, are two different issues, which have to be handled distinctly. CAS has already had the opportunity to form this view (TAS 2005/A/902 & 903, §§ 127-128).
14. Therefore, the Sole Arbitrator confirms that the entitlement to compensation for the transfer of the player is legally distinct and completely separate from the entitlement to obtain the training compensation for training and education.
15. The Sole Arbitrator's construction of the Appellant's wording "*DSC Arminia will not raise any claims in connection with transfer compensation*" is that it accepted that there was no existing claim for transfer compensation for the Player against his new club. It must be taken into account that the letter was sent to M., not to his new club. The Sole Arbitrator is of the opinion that this communication should be interpreted as a communication from a legal entity (DSC Arminia) to its former player, who received a confirmation that his transfer is free of claims concerning the transfer. The new club is thus not entitled to rely upon such communication, which was not addressed to it and which, therefore, did not create any right in its favour.
16. Based on the foregoing, the Sole Arbitrator is of the opinion that such declaration by the Respondent did not legally preclude it to raise the claim for training compensation. It is unfounded that DSC Arminia renounced both the claim connected with the transfer of M. and the claim for his training and education. Therefore, as the principle of the training of the Player has not been disputed by the Appellant, the Respondent's claim for such training and education appears founded.

C. The training period to be taken into account for the calculation of the training compensation

17. In accordance with Art. 13 of the FIFA Regulations and Art. 5 para. 1. of the FIFA Application Regulations, the period to be taken into account for the calculation of training compensation, starts at the beginning of the season of the player's 12th birthday and finishes, as a general rule, at the end of the season of the player's 21st birthday. The FIFA Decision emphasized that the period to be taken into account is from the season 1996/1997 until the season 2004/2005. The

DRC acknowledged that, according to the Player's passport remitted by the German Football Federation, M. was born in 1984 and was registered with DSC Arminia as a non-amateur player during the seasons 2002/2003 and 2003/2004. DSC Arminia would therefore be entitled to a training compensation for a period of 2 seasons.

18. FIFA Circular no. 769 sets forth the philosophy underlying the rules on training compensation. Circular no. 769 specifies that in order to calculate the training compensation, *"only years of effective training may be taken into account"*, making also reference to *"full years of proper and proven training"*.
19. In the Circular no. 801, FIFA, while being asked to determine what triggers the end of a player's training and/or education, explains that *"...it is a question of proof, which is at the burden of the club that is claiming this fact"* and confirms that *"... A player who regularly performs for the club's 'A' team could be considered as having accomplished his training period. This may certainly signal that the formation of a player has been completed but there may be other indications hereto. The decision on this will have to be taken on a case-by-case basis. This principle will also apply to apprentice professionals or players under a scholarship agreement"*.
20. As already said, neither party disputes that the Respondent actually trained and educated the Player while he played in Germany. Neither did the Appellant allege and prove that the Player regularly performed for the club's "A" team. Therefore the Sole Arbitrator holds that the Player indeed received effective, proper and proven training for the whole period of both consecutive seasons 2002/2003 and 2003/2004.
21. It follows that the period to be taken into account for the calculation of the training compensation is the undisputed period of 2 seasons 2002/2003 and 2003/2004.

D. The categorization of clubs for the calculation of training compensation

22. According to the FIFA Circular no. 826 dated 31 October 2002 and Annex to Circular no. 826, which regards the categorization of clubs, DSC Arminia is a first division club, belonging to category 1 in Germany and FK Sarajevo is a first division club, belonging to category 3 in Bosnia and Herzegovina. Annex to Circular no. 826 provides for a 4-category system for Germany and a limited 2-category system for Bosnia and Herzegovina.
23. The indicative amounts on the basis of above Circular and Annex are EUR 30,000 for FK Sarajevo as a first division club in Bosnia and Herzegovina and EUR 90,000 for DSC Arminia as a first division club in Germany.
24. In accordance with Art. 7 para. 1. of the FIFA Application 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. In the case at hand, the total relevant period of time to be taken into consideration equates 2 seasons between ages 18 and 20.

25. Pursuant to Art. 7 para. 3. of the FIFA Application Regulations, as a general principle, compensation for training must be calculated on the basis of the country in which the new club is located (also point 2b(i) of the FIFA Circular no. 769 dated 24 August 2001). The exception provided by Art. 7 para 4 of the FIFA Application Regulations, according to which the costs of the former club must be taken into consideration, only applies whenever both involved clubs are located in the EU/EAA area. This exception is irrelevant in the present case, as the Appellant is not located within the EU/EAA area.
26. Based on all foregoing considerations, the Sole Arbitrator determines that the annual indicative amount applicable for the calculation of training compensation involving a non-amateur player registered for a club from German First Division in seasons 2002-2004 when the same player entered into new contractual relationship with a club of the First Division in Bosnia and Herzegovina, is EUR 30,000 and not EUR 90,000, as determined by the DRC in the challenged decision.
27. It follows that the Appellant shall pay the amount EUR 60,000 to the Respondent as training compensation for the training and education of the player M. during the seasons 2002/2003 and 2003/2004.
28. The Appellant's claim must therefore be partly accepted and the Decision of the DRC confirmed only up to the amount of EUR 60,000. The corollary consequence is that the Respondent's claim for the payment the amount of EUR 180,000 is partly rejected as unfounded.

The Court of Arbitration for Sport rules:

1. The appeal filed by FK Sarajevo on 10 October 2006 against the decision passed on 30 May 2006 by the FIFA Dispute Resolution Chamber, is partly upheld.
 2. The Appellant, FK Sarajevo, shall pay the amount of EUR 60,000 (sixty thousand Euro) to DSC Arminia Bielefeld.
 3. All other motions or prayers for relief are dismissed.
 4. The decision passed on 30 May 2006 by the FIFA Dispute Resolution Chamber is confirmed in all other aspects.
- (...).