



Arbitration CAS 2005/A/927 Parma FC v. Manchester United FC, award of 19 December 2005

Panel: Mr Quentin Byrne-Sutton (Switzerland), President; Prof. Luigi Fumagalli (Italy); Mr Raj Parker (United Kingdom)

Football

Calculation of the training compensation

Discretion of the FIFA Dispute Resolution Chamber to adjust the training compensation

Recognition of a certain form of inquisitorial duty imposed on the DRC

Referral of the case to the DRC

1. **The FIFA Regulations for the Status and Transfer of Players give the DRC the authority to disregard the “indicative amounts” of training compensation and to reject a calculation based thereon, since Art. 42.1 lit. (b) (iv) states that the DRC has the “... discretion to adjust the training fee if it is clearly disproportionate to the case under review”. However, the DRC’s discretion must be limited by a duty to seek further information if the DRC does not reject *per se* the type of individual calculation invoked by a party as the basis for contesting the indicative amounts of training compensation, but simply considers evidence of the figures upon which the calculation is made to be lacking.**
2. **The foregoing interpretation of the DRC’s function and duties does not modify the weight of evidence required of the claimant to succeed on the merits, since the claimant remains bound by the strict proof of the facts relied on. It simply recognizes a certain form of inquisitorial duty imposed on the DRC under the current formulation of the FIFA regulations.**
3. **It derives from the logic of the FIFA regulations and the function assigned thereby to the DRC that the assessment of whether the “indicative amounts” for training compensation are disproportionate must be made whenever possible in first instance by the DRC. Therefore, the case must be sent back to the DRC for further fact-finding and a new decision.**

Parma Football Club (the Appellant; “Parma”) trained the player G. for several years before Manchester United F.C. (the Respondent; “Manchester United”) engaged him in November 2004 under his first non-amateur contract.

Despite negotiations in that connection, the two football clubs were unable to agree amicably on the amount of training compensation owed by Manchester United to Parma on the basis of the FIFA regulations.

As a result, Parma filed a claim with the FIFA Dispute Resolution Chamber (the “DRC”). In its decision of 1 June 2005 (the “DRC decision”), the DRC summarized the facts of the case as follows:

- *The player G., born [in] 1987, signed his first non-amateur contract with English club Manchester United FC on 3 November 2004.*
- *Having been involved in the training of the player, the Italian club Parma FC subsequently lodged a claim for training compensation as described in chapter VII of the FIFA Regulations for the Status and Transfer of Players.*
- *The player G. was registered with the Italian club Parma FC from January 2000 to 30 June 2004, during which time he was aged 12-17.*
- *According to the classification of clubs outlined in circular 826 dated 31 October 2002, (hereinafter: circular 826) the two clubs belong to category 1 (indicative amount of EUR 90,000 per year).*
- *The club Parma FC contests the application of the indicative amounts specified in circular 826 and puts forward its own individual calculation:*
 - *Parma FC’s calculation is based on the average annual amount the club has spent on training young players in recent years (EUR 2,776,104). This amount has not been supported by any documentary evidence.*
 - *This amount is divided by the average number of players trained by Parma FC who gain non-amateur status each year, namely 8.5, which produces a training fee of EUR 326,600 per player per year. The number of players that gain non-amateur status each year is not supported by any documentary evidence. Parma FC has a total of around 170 players in training.*
 - *Since the player in question had developed exceptional skills, an amount of EUR 100,000 has been added, making a total of EUR 426,600 per year.*
 - *In the opinion of Parma FC, this figure must be multiplied three, because given the age of the player, the category 1 classification referred to in circular 826 applies for three seasons of the player’s training with Parma FC. This brings the total to EUR 1,279,800.*
 - *For the first season and a half of training, during which period Parma FC feels that the category 4 classification of circular 826 should apply, only 1/9 of the above-mentioned annual amount (EUR 426,000) is payable, because the indicative amount circular 826 specifies for category 4 is 1/9 of that for category 1. The individual amount per season of training at category 4 level is therefore EUR 51,000. This figure is multiplied by 1.5, giving an amount of EUR 76,500.*
 - *In total, Parma FC thus demands that Manchester United FC pay EUR 1,356,300 in training compensation for the player G.*
- *The Dispute Resolution Chamber is invited to determine the amount the English club Manchester United FC must pay the Italian club Parma FC in training compensation for the player G.*

The DRC then reasoned as follows:

- “1. *The members of the Dispute Resolution Chamber were summoned to pass a decision on the present matter by the Chairman pursuant to Art. 1 point 6) of the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber.*
2. *The Dispute Resolution Chamber of the FIFA Players’ Status Committee shall review disputes coming under*

its jurisdiction pursuant to Art. 42 of the Regulations for the Status and Transfer of Players (hereinafter; the Regulations) at the request of one of the parties to the dispute.

3. *In accordance with Art. 42.1 lit. (b) (iv) of the Regulations, it falls within the purview of the Dispute Resolution Chamber to review disputes concerning training compensation fees.*
4. *Consequently, the Dispute Resolution Chamber is the competent body to decide on the present litigation concerning the training compensation fee claimed by the Italian club Parma FC.*
5. *Entering into the substance of the matter, the Chamber outlined that the training period of the player G. to take into consideration went from January 2000 to 30 June 2004, during which time the player was aged 12-17. Furthermore, the chamber took into consideration that the player concluded his first non-amateur contract at the age of 17, with the English club Manchester United FC.*
6. *Continuing, the Chamber stated that, as established in Chapter VII of the Regulations, the training compensation is payable for training incurred between the ages of 12 and 21, if the player concerned concludes a non-amateur contract before the age of 23.*
7. *It is therefore undisputed that the Italian club Parma FC is entitled to receive compensation for the training and education of the player G. for the second part of the sporting season 1999/2000 and the four sporting seasons from 2000/01 until 2003/04, which the player spent with Parma FC.*
8. *The amount due by the club Manchester United FC is to be calculated in accordance with the Regulations and the FIFA Circular letter no. 826 dated 31 October 2002. As far as the categorisation of Parma FC and Manchester United FC is concerned, as provided for by the Circular letter 826, both clubs belong to Category 1. According to the mentioned Circular letter, the indicative amount for Category 1 in Europe is EUR 90,000 per year of training.*
9. *However, in accordance with Article 7 paragraph 2 of the Regulations governing the Application of the Regulations for the Status and Transfer of Players, the amount payable for the training of players aged 12 to 15 shall be based on the training and education costs for category 4. In this regard, the Chamber stated in particular that, in accordance with its long standing and well established jurisprudence, category 4 is applicable for three sportive seasons, i.e. the three seasons after the season in which the player celebrated his 12 birthday. According to the above-mentioned Circular letter, the indicative amount for Category 4 in Europe is EUR 10,000 per year of training.*
10. *On account of the above, the Chamber stated that for the second part of the sporting season 1999/2000, Parma FC shall be entitled to 50% of the amount payable per year of training for category 4, therefore the amount of EUR 5,000.*
11. *Continuing, the Chamber stated that for the sportive seasons 2000/01 and 2001/02, when the player was aged 13 and 14, Parma FC shall be entitled to the amount payable per year of training for category 4, therefore the total amount of EUR 20,000.*
12. *And finally, the Chamber stated that for sporting seasons 2002/03 and 2003/04, when the player was aged 15 and 16, Parma FC shall be entitled to the amount payable per year of training for category 1, therefore the total amount of EUR 180.000.*
13. *In view of the above, the Chamber decided that the English club Manchester United FC has to pay to the Italian club Parma FC for the training of the player G. the total amount of EUR 205,000.*
14. *As far as the individual calculation presented by the club Parma FC is concerned, in accordance with which the*

amount of training compensation for the player in question shall amount to EUR 1,356,300, the Dispute Resolution Chamber took note that the amounts based on the calculation presented by the club Parma FC are not supported by any documentary evidence.

15. *In this regard, the Dispute Resolution Chamber referred to circular 826, page 2, last paragraph, which states 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.”.
16. *Following this, the Dispute Resolution Chamber stated that a club objecting to a training compensation calculated on the basis of the indicative amounts mentioned within the circular 826 is entitled to prove that such compensation is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centres, budgets, etc. In addition, the Dispute Resolution Chamber stated that in the absence of sufficient evidence, the indicative amounts of circular 826 apply.*
17. *With regard to the above, the Dispute Resolution Chamber decided that, due to the lack of any documentary evidence supporting the calculation presented by the club Parma FC, it is not in a position to follow this individual calculation. By deciding in this way, the Dispute Resolution Chamber followed the jurisprudence of the Court of Arbitration for Sport in similar matters.*
18. *In conclusion, the Dispute Resolution Chamber decided that the English club Manchester United FC has to pay to the Italian club Parma FC for the training of the player G. the total amount of EUR 205,000”.*

On such basis, the DRC decided as follows:

- “1. *The claim of the Italian club Parma FC is partially accepted.*
2. *The English club Manchester United FC has to pay the amount of EUR 205,000 to the club Parma FC.*
3. *The amount due to the club Parma FC has to be paid by the club Manchester United FC **within the next 30 days** as from the date of notification of this decision.*
4. *In the event that the debts of the Respondent are not paid within the stated deadline, an interest rate of 5% per year will apply as from the first day after the stated deadline.*
5. *If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted to FIFA’s Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
6. *The club Parma FC is directed to inform the club Manchester United FC immediately of the account number to which the remittance is to be made, and to notify the Dispute Resolution Chamber of every payment received.*
7. *According to art. 60 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 10 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the*

filing of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (cf. point 4 of the directives)”.

On 4 July 2005, FIFA communicated the DRC decision to Parma and Manchester United.

On 14 July 2005, Parma filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”) against the DRC decision. On 25 July 2005, Parma filed its appeal brief. In brief, Parma submits that the DRC misapplied the FIFA regulations insofar as it calculated the training compensation on the basis of the indicative amounts provided therein and without informing Parma that the DRC deemed insufficient the information Parma had supplied in contending the indicative amounts were disproportionate.

On 17 August 2005, Manchester United filed its answer. In brief, Manchester United submits that the DRC correctly applied the FIFA regulations by calculating the training compensation on the basis of the indicative amounts provided therein, notably because the DRC had no obligation to request additional information and Parma failed to meet its burden of proving the invoked investments.

The present award was rendered after consideration of the written documents on file.

LAW

Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from articles 59 and 60 of the FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (“the Code”), which is applicable to the present arbitration in accordance with art. R27 of the Code.

Applicable Substantive Law

2. Art. R58 of the Code provide that:

“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. Article 59 §2 of the FIFA Statutes provides that: *“The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law”.*

4. Moreover, with respect to the substance of the dispute both Parties have based their arguments on various provisions of the FIFA regulations.
5. Consequently, the Panel considers the FIFA regulations (July 2001 edition) to be applicable.
6. The main provisions of the FIFA regulations having been invoked by the parties are the following:

a) FIFA Regulations for the Status and Transfer of Players (“FIFA Basic Regulations”)

“Chapter XIV. Dispute resolution, disciplinary and arbitration system

Art. 42

¹ [...]

- (iv) *In addition, the Dispute Resolution Chamber may review disputes concerning training compensation fees and shall have discretion to adjust the training fee if it is clearly disproportionate to the case under review. Furthermore, the Dispute Resolution Chamber can impose disciplinary measures on the basis of Art. 34, par. 4 of the FIFA Statutes where these regulations or the Application Regulations so provide, or pursuant to a specific written mandate by the FIFA Players’ Status Committee. The Dispute Resolution Chamber shall rule within 60 days after the date on which a case has been submitted to it by one of the parties to the dispute (with the exception of those disciplinary measures referred to in Art. 23, which are covered by (ii)). These decisions shall be reasoned, and can be appealed against pursuant to (c)”.*

b) FIFA Circular letter no. 826

“Revised FIFA Regulations for the Status and Transfer of Players – Training Compensation

[...]

Accordingly, pursuant to Art. 45 of the Regulations for the Status and Transfer of Players, the FIFA Players Committee, as endorsed by the Executive Committee, has concluded that it is necessary to help the various participants with the calculation of training compensation amounts by (i) establishing indicative amounts per confederation, which are subject to review by the Dispute Resolution Chamber in individual cases, and (ii) postponing the application of certain principles relating to transfer compensation until the review of the entire regulations governing the status and transfer of players at the end of the 2003/2004 season

Indicative amounts

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:

[...]

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.

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.

[...]

For greater certainty, it is reaffirmed (as already established in circular letter no. 799) that the revised regulations are applicable to all transfers of players that have occurred after the entry into force of the revised transfer regulations on 1 September 2001. All pending cases on the compensation amounts owed for the training of young players, that have transferred as from 1 September 2001, are to be calculated in accordance with the present circular”.

The Role of the DRC in Determining Training Compensation

7. In its decision the DRC details the different steps and elements of Parma’s individual calculation for training compensation, amounting to a claim of EUR 1,279,800, pointing out that the basis of such calculation is “... *the average annual amount the club has spent on the training young players in recent years (EUR 2,776,104)*”.
8. However, for the motive that “... *the amounts based on the calculation presented by the club Parma FC are not supported by any documentary evidence*”, the DRC then rejects Parma’s individual calculation, in favour of a calculation based on the “indicative amounts” defined in the FIFA regulations.
9. In doing so, the DRC adds that “... *due to the lack of any documentary evidence supporting the calculation presented by the club Parma FC, it is not in a position to follow this individual calculation*”.
10. Whether or not the DRC was entitled to proceed in this manner depends on the content of the FIFA regulations.
11. There is no doubt that the FIFA regulations give the DRC the authority to disregard the “indicative amounts” and to reject a calculation based thereon, since Art. 42.1 lit. (b) (iv) of the FIFA Basic Regulations states that the DRC has the “... *discretion to adjust the training fee if it is clearly disproportionate to the case under review*”.
12. However, the question remains how the DRC must exercise such discretion and notably whether it should spontaneously seek additional information in case of doubt concerning the content and/or proof of an individual calculation.
13. To answer this question it is necessary to interpret the relevant provisions of the FIFA regulations and notably the following paragraph of the FIFA Circular letter no. 826:

“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.”.

14. The Panel finds that the procedure described in the above paragraph of the FIFA Circular letter no. 826 requires the DRC to at least give a claimant the opportunity of providing further evidence of its individual calculation if the DRC does not reject the type of calculation proposed but merely estimates insufficient evidence to have been submitted regarding the quantum. The Panel’s finding is based on the following consideration:
 - The “indicative amounts” provided in the FIFA regulations are termed “indicative” precisely because the particular circumstances of a case may make a calculation based thereon inappropriate due to the result being “disproportionate”.
 - Art. 42.1 lit. (b) (iv) of the FIFA Basic Regulations gives the DRC the specific role of hearing and assessing disputes involving claims that the “indicative amounts” are disproportionate.
 - The function of the DRC is therefore to act as a body of first instance for judging claims of such nature and in doing so to establish criteria and set precedents regarding the circumstances in which the “indicative amounts” may be deemed disproportionate.
 - FIFA Circular letter no. 826 states that the DRC “*will*” review whether the “indicative amounts” are disproportionate and states that “*For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary*”.
 - Although the word “*can*” leaves some discretion to the DRC as to when to seek further evidence, it would create uncertainty and unfairness if this discretion were deemed to be exercisable without bounds, i.e. in an arbitrary fashion.
 - Consequently, the DRC’s discretion must be limited by a duty to seek further information if the DRC does not reject *per se* the type of individual calculation invoked as the basis for contesting the indicative amounts of training compensation, but simply considers evidence of the figures upon which the calculation is made to be lacking.
 - Such interpretation of the limits within which the DRC should exercise its discretion also fits with the DRC’s function as defined by the FIFA regulations, since it means the DRC in first instance, rather than the CAS upon appeal, will be more often exercising the basic role of determining upon what criteria and in what circumstances the indicative amounts contained in the FIFA regulations are deemed “*clearly disproportionate*”.
15. The foregoing interpretation of the DRC’s function and duties under the current FIFA regulations does not modify the weight of evidence required of the claimant to succeed on the merits, since the claimant remains bound by the strict proof of the facts relied on. It simply recognizes a certain form of inquisitorial duty imposed on the DRC under the current

formulation of the FIFA regulations, bearing in mind that FIFA's "circular letters" are intended, among other things, to inform members of the FIFA's practice under its regulations.

16. Due to distinguishing factors, the present CAS award does not detract from existing precedents of CAS relating to training compensation claims. In three CAS cases – CAS 2003/O/506, CAS 2003/O/527 and CAS 2004/A/696 – where it was claimed that compensation should be based on "true training costs" instead of on the indicative amounts, such argument was only made on appeal in front of the CAS. Consequently, and contrary to the situation in this case, the DRC was not asked to consider a claim that compensation should be admitted and calculated on the basis of true training costs, and it could not have the task of evaluating and requesting evidence thereof.
17. In the present case, the content of the DRC decision of 1 June 2005 indicates that although the DRC understood the basis of the individual calculation upon which Parma was requesting a derogation from the "indicative amounts", the DRC failed to ask Parma to produce any additional documents in support of the figures underlying its calculation.
18. The Panel considers that by acting in such manner the DRC failed to correctly exercise its function and properly fulfil its duties under the FIFA regulations as summarized above, in particular the DRC's duty, where the DRC does not reject the type of calculation proposed but merely estimates insufficient evidence of the quantum to have been submitted, to give Parma the opportunity of producing further evidence of its costs and investments if the DRC deemed relevant information to be missing.
19. Furthermore, because it derives from the logic of the FIFA regulations and the function assigned thereby to the DRC that the assessment of whether the "indicative amounts" for training compensation are disproportionate must be made whenever possible in first instance by the DRC, the case must be sent back to the DRC for further fact-finding and a new decision.

The Court of Arbitration for Sport rules that:

1. The appealed decision of 1 June 2005 of the FIFA Dispute Resolution Chamber is set aside.
2. The matter in dispute is remitted to the FIFA Dispute Resolution Chamber with the order for it to render a new decision, within a reasonable timeframe, after:
 - i. Requesting Parma F.C. to provide all the documents, such as invoices, accounts, training centre budgets, etc., considered necessary to evidence and calculate the training compensation being claimed by Parma F.C. for the player G.
 - ii. Determining, on the basis of the evidence received from Parma F.C., whether or not the Dispute Resolution Chamber deems the training fee calculated on the basis of the indicative amounts in the FIFA regulations to be disproportionate, and, if so, to adjust the amounts for the training compensation so as to reflect the specific situation of the case.