



**Arbitration CAS 2004/A/757 Finnish Ice Hockey Association v. International Ice Hockey Federation (IIHF), award of 25 October 2005**

Panel: Mr François Carrard (Switzerland), Sole arbitrator

*Ice Hockey*

*Transfer of a player*

*Interpretation of the wording of a contract*

*Consistency of the interpretation with the intent of the parties and with the content of the contract*

1. **Contrary to concepts such as “transfer”, “recall”, “loan”, “assignment” or “reassignment”, which might all imply some form of legal characterization, the word “return” is juridically “neutral” and covers a more generic situation of fact rather than a legal concept.**
2. **Such an interpretation is not inconsistent with the general intent of all the interested parties in the Memorandum of Agreement between the IIHF and the IIHF National Associations regarding transfers of players to/from the NHL to “maintain good order within the sport”.**

On 24 October 2004, the Finnish Ice Hockey Association (“the Appellant”) filed a statement of appeal to the CAS against a decision issued by the IIHF Council on 22 September 2004 in the subject matter “*Appeal Re. Payment for S.*”.

The substance of the challenged decision was that the IIHF Council confirmed a previous decision taken by IIHF, in particular a ruling by the IIHF legal committee, as notified to the Appellant by letter of 21 July 2004, regarding “*the calculation and payment of the applicable fees to the Jokerit Club, which are detailed in the IIHF/National Association Agreement regarding the transfer of players to and from the National Hockey League*” in the case of the player S. The consequence of the challenged decision was that an amount of USD 103,687 (one-hundred-and-three-thousand-six-hundred-eighty-seven US dollars) claimed by the Appellant from IIHF has been denied.

The main elements of the dispute between the parties concern the interpretation of a Memorandum of Agreement dated 4 September 2001 between IIHF and the IIHF National Associations – including the Appellant – regarding transfers of players to/from the National Hockey League (“the Memorandum”). Based on its interpretation of the Memorandum, the Appellant considers that it is entitled to receive the above-mentioned amount of USD 103,687 from IIHF, which the latter denies.

Through a network of intertwined agreements, the IIHF, the NHL and a number of national associations, including Finland, have established, beginning in 1994, a system under which, in short, the NHL Clubs have the right to hire players from IIHF Clubs by paying, through the NHL, a lump sum by way of a relief fee to be annually paid to the IIHF, which lump sum is to be distributed in accordance with agreements entered into between the IIHF and the National Associations.

The contractual network concerned currently in force consists of a Memorandum of Agreement entered into on 9 June 2001 between the NHL and the IIHF (“the IIHF/NHL Agreement”) and a series of Memoranda of agreement (including the Memorandum concerning Finland) entered into in September and October 2001 between the IIHF and the National Associations, such Memoranda being practically all identical.

Under the contractual arrangements currently in force, the IIHF/NHL agreement provides in particular that the NHL pays an annual development fee to IIHF. The amount for the 2003/2004 NHL season was USD 10,200,000. The allocation of such lump amount to the various national associations is determined in accordance with a “distribution model”, included in all Memoranda between the IIHF and the national associations, and which provides for specific and detailed criteria of distribution. Such criteria include the definition of two categories of players, take into account the number of players, allocate specific units per category and determine other criteria such as weighing factors to be applied to reflect the skills of the players. In other words, the system in place through the contractual network currently in force is a general distribution and payment system, taking into account the interests of all the parties concerned, including national associations and clubs; it is based on rather sophisticated criteria which have to be applied by the IIHF to all national Associations simultaneously for each year.

The player S. (“the Player”), was born in 1984. He played with the Finnish team of Jokerit, Helsinki (“Jokerit”) during the seasons 2001/2002 (twenty-eight games) and 2002/2003 (forty games).

The Player was a first draft of the NHL Team New York Islanders at the 2002 NHL entry drafts.

On 15 July 2003, the Player executed with the NHL Club New York Islanders a “National Hockey League Standard Player’s contract” (“the NHL player’s contract”) under which the New York Islanders agreed in particular to employ the player for a term of three years commencing on 1 October 2003.

An addendum “A” to the NHL player’s contract, also executed on 15 July 2003 between the player and the New York Islanders, includes a clause entitled “European Assignment”, specifying the conditions under which, “*subject to the terms of any agreement between the IIHF and NHL*”, the New York Islanders agree “*to loan the player to a European Hockey Club...*”.

On 21 January, 2005, Mr Mike Milbury, general manager of the New York Islanders Hockey Team, sent the following message by fax to Mr André Noël Chaker, legal adviser of the Finnish National Association:

*“January 21, 2005*

*(...)*

Re: S.

*By the way of review, following find the information we discussed:*

- *July 15, 2003 the NY Islanders signed S. to an NHL Contract.*
- *September 2003 he attended NY Islanders’ training camp and remained on our roster until December 2003.*
- *December 4, 2003 Sean was assigned to Bridgeport (AHL).*
- *December 8, 2003 Sean was transferred from Bridgeport (AHL) to the Finnish World Jr National Team*
- *January 5, 2004 Sean was reassigned to Jokerit (Finnish League)*
- *On or about March 16, 2004 S. travelled to New York to be evaluated by our team doctors because of an injury sustained while with Jokerit. He remained in the New York area for rehabilitation and physical therapy under our supervision.*
- *Upon returning to health and after being cleared to play on April 14, 2004 Sean was officially recalled to Bridgeport (AHL). He participated in 7 AHL playoff games.*

*At this time, S. remains under NHL Contract with the New York Islanders Hockey Club, LP through June 30, 2006, Subject to NHL/AHL By-laws, and is under no other team’s jurisdiction.*

*(Signed by Mike Milbury)”*

For each of the transfers of the player from the New York Islanders to Bridgeport (date of transfer 4 December 2003) and from the New York Islanders to Jokerit (date of transfer 5 January 2004), the standard printed “NHL Player Transfer to/from minors form” was filled in. Such form includes a printed section entitled “loaned to minor league club”, providing for the characterization of the transfer as “regular transfer”, or “termination of emergency conditions”, or “emergency conditions not terminated, loaned”, or “conditioning purposes”, or “reassignment (minor to minor)” or “other (details)”. The transfer of the player from the New York Islanders to Bridgeport was characterized, under the section “Loan to a minor League Club” as “regular transfer”. On the other hand, the transfer of the player from the New York Islanders to Jokerit was characterized, under the same section (Loan to a minor League club) as “other (details)” with the following characterization “Reassigned after World JR to Jokerit (Finnish League)”.

In November 2003, the Appellant, for the benefit of Jokerit, was awarded by the Respondent a payment in the amount of USD 103,687, corresponding to one half of the payment due by the Respondent to the Appellant pursuant to the distribution model and payments schedule provided in article 3 of the Memorandum.

The Appellant requested from the Respondent payment of the remaining half, i.e. an additional amount of USD 103,687, which the Respondent refused, which led to the dispute subject matter of this arbitration.

## LAW

1. The jurisdiction of CAS *in casu* is based on art. 6.1 of the Memorandum and has been recognised by both parties. The Panel has full power to review the facts and the law in accordance with Art. R57 of the Code of Sports- related arbitration (“the Code”).
2. Article 8.9 of the Memorandum, entitled “Applicable Law” provides the following:  
*“This agreement shall be governed by the substantive laws of Switzerland without reference to conflict of law rules”.*
3. The main issue in dispute is that of the interpretation of the Memorandum, more particularly the contents of article 3.1.2 of the Memorandum, which provides the following:  
*“If the player returns to his previous IIHF Team between 2 October and January 15 of the player’s first season under which he was under a player’s contract to a NHL Team the IIHF Team/Teams shall immediately reimburse 50% of the IIHF payment attributable to the respective IIHF Team/Teams. The repayment should be distributed according to the distribution model in article 3.2 and be paid out as an extra payment in March as specified in article 3.4...”* (emphasis added).
4. The Appellant’s main argument is that the Respondent did not properly interpret the contents of the Agreement, and more specifically the above-mentioned section 3.1.2. In substance, the Appellant submits that the player never “returned” to Jokerit, nor did he “remain” with such club within the terms of article 5.5 of the Memorandum. Article 5.5 paragraph 1 provides that *“a IIHF player who signs a player contract with a NHL Team may, upon the mutual agreement of his NHL Team and IIHF Team remain with a IIHF Team for any number of future IIHF seasons, or be subject to assignment by his NHL Team to his IIHF Team on terms which are mutually agreed too...”* (emphasis added).
5. The Appellant further contends that the player fell “under the jurisdiction of his NHL Team” upon signature of his contract and that at no time was the NHL Team’s “jurisdiction” over the player interrupted.
6. The Respondent submits that in accordance with article 18 of the Swiss Code of Obligations (CO), in assessing of the content of a contract, the real intent which was mutually agreed upon by the parties should be considered. The Respondent further submits that it is generally accepted that there are various means to interpret a contract of provision, the basic means of interpretation being the wording of the contract itself. Additional means of interpretation would

be the history of the contract and of the contract negotiations, the actual circumstances at the time of the contract execution and the behaviour of the parties prior to and after the execution of the contract as well as the purpose of the concerned contract. The Respondent submits that the wording of the contract, in particular article 3.1.2 which is in dispute is clear in itself and does not leave any space for interpretation. The Respondent further submits that such interpretation complies with the behaviour of the parties prior to and following the execution of the contract and with the purpose of the contract as well as with the intent of the parties. For the Respondent, the word “return” means “go back” or “revert” which is exactly what happened since the player went back to Jokerit before 15 January 2004. The facts being clear, Jokerit and the Appellant have no right to claim the payment of the remaining 50%.

7. In short, the Appellant submits that the word “return” must be interpreted taking into account the legal contractual status of the player who is under the “jurisdiction” of the New York Islanders. The fact that the player’s contract entered into on 15 July 2003 between the player and the New York Islanders is still valid is not disputed. On the other hand, the Respondent’s interpretation leads to taking into account the situation of fact and rather than the actual legal contractual status of the player.
8. It is established, in fact, that, after having played eighteen games with the New York Islanders during the season 2003-2004, the player went back to Finland in mid-December 2003. He played with the Finnish National Team during the ‘World under 20 Championships’ and then went back, before 15 January 2004, to his previous Finnish Team, Jokerit, with which he played twenty-three games during the remainder of the 2003-2004 season which he completed with Jokerit before going back to New York in March 2004. The question is whether these facts, as established, constitute or not a “return” between 2 October and 15 January in accordance with article 3.1.2, paragraph 3, of the Memorandum.
9. While there is no dispute as to the fact that the player’s contract between the New York Islanders and the player was at all times valid, it should be noted that the said contract actually provides for the possibility for a player to be loaned to a European Team. It should also be noted that the contract language regarding the status of the player with the New York Islanders refers to concepts such as transfer, recall, loan, assignment or reassignment, which might all imply some form of legal characterization which is not the case with the word of “return” which covers a more generic situation of fact rather than a legal concept. The juridical “neutrality” of the word “return” is an indication that the contents of article 3.1.2 of the Memorandum emphasises more the actual situation of fact than the possible legal status of the players.
10. The Respondent’s interpretation of the word “return” in the sense of article 3.1.2 of the Memorandum makes of such word a concept of fact and not a concept of legal status or “jurisdiction”. The Panel considers that, contrary to the Appellant’s submission, such an interpretation is not inconsistent with the general intent of all the interested parties, NHL, IIHF and National Associations to “*maintain good order within the sport*”. The Panel further considers that the interpretation given by the Respondent does not violate the contents of the Memorandum, nor does it violate the contents of the contractual network instituted by the IIHF with the NHL and the National Associations. By considering that the player had actually “returned” to Finland

between 2 October 2003 and 15 January 2004, the Respondent complied with the system instituted for the allocation of payments originating from the NHL. The player was available for the team Jokerit from early January 2004 on; he played twenty-three games with the team Jokerit and completed the Finnish season. Thus, he contributed substantially to the club Jokerit for the remainder of the season 2003/2004. The Panel considers that these facts constitute a “return” in the sense of article 3.1.2 of the Memorandum. The Respondent’s interpretation is justified. Therefore, the remaining 50% of the IIHF payment concerned shall not be paid by the Respondent to the Appellant.

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

1. The appeal filed by Finnish Ice Hockey Association on 24 October 2004 is dismissed.
2. The decision issued on 22 September 2004 by the IIHF Council is confirmed.
3. (...).
4. (...).
5. All other conclusions and requests by the parties are dismissed.