



Arbitration CAS 2006/A/1158 & 1160 & 1161 F. C. Internazionale Milano S.p.A. v. Valencia Club de Futbol SAD, award of 9 July 2007

Panel: Mr Jan Paulsson (France), President; Mr José Juan Pintó (Spain); The Hon. Michael Beloff QC (United Kingdom)

Football

Solidarity contribution

Interpretation of some provisions of the FIFA regulations

Contradictory interpretation of the FIFA regulations by a FIFA circular

Interpretation of the clause of a transfer contract

1. The FIFA regulations regarding the solidarity contribution require the new club to distribute 5% of the amount paid to the former club to the clubs involved in training the player in question. This interpretation follows from the plain meaning of the words used in the provisions and in particular the use of the past participle 'paid', which implies that the compensation is first *paid* to the former club and then the solidarity contribution is calculated by reference to that amount by the new club and distributed to the training clubs. It also accords with the reality that it is the sole responsibility of the new club to calculate the amount of the solidarity contribution and to transfer that amount to the training clubs. The legal relationship created by the provisions is between the new club and the training clubs. The former club is not privy to this relationship and, moreover, the training clubs have no right to proceed against the former club to recover the solidarity contribution.
2. Neither Article 25(1) of the 2001 Regulations, nor Articles 10 or 11 of the 2001 Application Regulations, employ the words 'deducted' or 'payable'. The use of these words in the FIFA Circular No 826 – which reads that the 5% solidarity contribution is to be deducted from the amount payable to the player's former club – implies, contrary to the plain meaning of the aforementioned provisions, that the solidarity contribution is to be *withheld* by the new club from the amount that *will be paid* to the former club. The text of Article 25(1) of the 2001 Regulations and Articles 10 or 11 of the 2001 Application Regulations cannot support this purported 'clarification' without being amended. However, FIFA Circular No. 826 was issued by the Acting General Secretary of FIFA. The General Secretary of FIFA, in accordance with the FIFA Statutes, does not have the power to amend FIFA regulations. That power is vested in the Executive Committee. Therefore, the contradictory interpretation placed upon Article 25(1) of the 2001 Regulations and Article 10 of the 2001 Application Regulations by FIFA Circular No 826 must be disregarded.
3. The words 'net of all costs' appear in contracts in a vast number of different commercial contexts; they cannot be read as covering a specific liability imposed by a special legal

regime relating to the transfer of footballers enacted by FIFA. If the parties to a transfer contract governed in part by the FIFA regulations wish to make provision in respect of the liability for the payment of the solidarity contribution, then they must do so by wording which conveys such an intention.

A transfer contract for the player C. was concluded between the clubs F.C. Internazionale Milano S.p.A. (“Inter Milano”) and Valencia Club de Futbol S.A.D. (“Valencia”) on 25 August 2004 (the “Transfer Contract”). The transfer price was 2,500,000 Euros. A dispute arose between Inter Milano and Asociación Deportiva Juan XXIII de Rosario, Boca Juniors and Atlético Rosario Club Central as to whether Inter Milano was obliged to pay a solidarity contribution to the Argentine clubs for their part in the training of C. The disputes came before the Dispute Resolution Chamber (DRC) of FIFA. Valencia participated in the proceedings before the DRC as an ‘intervening party’. In its decisions of 27 April 2006 (the “DRC’s Decisions”), the DRC ruled that Inter Milano was obliged to make a solidarity payment to Asociación Deportiva Juan XXIII de Rosario of 28,125 Euro plus interest, of 12,500 Euro plus interest to Boca Juniors and of 66,666 Euro plus interest to Atlético Rosario Central.

Inter Milano had procured a bank guarantee in favour of Valencia for the full amount of the transfer price and Valencia had called upon the guarantee for that amount. In the proceedings before the DRC, Inter Milano claimed that Valencia was obliged to reimburse it for the total sum of the solidarity contribution it had paid to the Argentine clubs involved in the training of C. The DRC made no ruling in the dispositive section of its Decisions on this point. In respect of this alleged omission, Inter Milano appealed to CAS.

Inter Milano lodged three appeals against the DRC’s Decisions on 21 September 2006. On 29 September 2006, Inter Milano filed its Appeal Brief.

On 6 October 2006, Valencia responded by raising an objection to the jurisdiction of CAS. On 23 October 2006, Valencia filed its Answer to Inter Milano’s Appeal Brief.

On 27 September 2006, CAS invited FIFA to indicate whether or not it intended to participate as a party in the proceedings pursuant to R54.4 and R41.3 of the Code of Sports-Related Arbitration. On 10 October 2006, FIFA communicated its decision not to participate in the proceedings.

On 23 November 2006 the CAS Court Office, upon instructions of the Panel, informed the parties that the three appeals were to be joined and decided in a single award.

A hearing was originally scheduled in this case for 12 March 2007. On 21 February, Inter Milano informed CAS and Valencia that it had commenced proceedings before the FIFA Players’ Status Committee in order to recover the disputed amount from Valencia and, in connection therewith, requested a stay of the appellate proceedings before CAS. Valencia responded on 27 February by stating that it would be more appropriate for Inter Milano to withdraw its appeal and pay Valencia’s costs but that, in the interim, it agreed to a stay. On 7 March, Inter Milano reiterated its request for a

stay. The hearing date was vacated by the Panel and the Parties were informed on 16 March that the Panel would consider the expediency of fixing another hearing date in due course.

The hearing took place on 16 May 2007. The Parties gave opening and closing submissions and were afforded the opportunity of examining the other Party's witness.

On 23 May 2007, Inter Milano forwarded new documents to the CAS Court Office for the attention of the Panel including: (i) Commentary on the 2005 Regulations; (ii) Decision of the DRC dated 21 November 2006 (in Spanish); (iii) Decision of the DRC dated 26 October 2006; (iv) Decision of the DRC dated 21 November 2006. On the same day, the CAS Court Office transmitted a copy of these documents to Valencia who, by letters of 24 and 28 May 2007, objected to the admissibility of these new documents filed by Inter Milano after the hearing. According to R56 of the Code of Sports-Related Arbitration, it is for the Chairman of the Panel to rule upon the admissibility of documents filed after the closing of the writing submissions. In the event, all the aforementioned documents are legal texts (rather than factual materials), which were already known to the Panel prior to their transmittal by Inter Milano. As result, the Panel's receipt of these documents after the hearing has had no impact upon its deliberations and hence no ruling as to their admissibility is necessary.

On 23 May 2007, FIFA wrote to the CAS Court Office with some observations concerning FIFA Circular Letter 826. On 1 June 2007, the Parties were invited to comment upon this communication on or before 8 June 2007. The matters raised in FIFA's letter of 23 May are considered in the Panel's consideration of the merits of the dispute below.

LAW

Introduction

1. The appellate jurisdiction of CAS is contingent upon the initiative of a party with a specific grievance in relation to a specific decision of a sporting body. Sometimes the resolution of that specific grievance requires the interpretation of a regulation and that interpretation may provide more general guidance to other members of the same sporting body thereafter. But the timing of that guidance is entirely random – it depends upon the initiative of a party to whom a decision of a sporting body is addressed. A party affected by a sporting body's interpretation of a regulatory provision may decline to avail itself of the right to appeal for reasons personal to that party. If a number of affected parties follow the same course over a period of time, then it is inevitable that the sporting body's interpretation will become entrenched and will thereby generate expectations among other members of the sporting body. Those expectations may be disappointed when, after a lengthy period of time has elapsed, the sporting body's interpretation is finally challenged in CAS appellate proceedings.

2. These general observations on the limitations of the CAS appellate function are borne out in the present case. It appears that the specific provisions of the FIFA regulatory framework at the heart of this dispute have never been the direct subject of an appeal before a CAS Panel for the whole period of their legal existence. Those provisions are Article 25(1) and Article 10 of the Regulations for the Status and Transfer of Players (the “2001 Regulations”) and the Regulations Governing the Application of the Regulations for the Status and Transfer of Players (the “2001 Application Regulations”) respectively, which relate to the solidarity mechanism. Both regulations were adopted by the FIFA Executive Committee in July 2001 and came into effect on 1 September 2001; they have now been replaced by the Regulations for the Status and Transfer of Players of 1 July 2005 (the “2005 Regulations”).
3. This appeal is thus in all probability the last time that a CAS Panel must pronounce upon the proper interpretation of the aforementioned provisions, which have now expired. The decision of the CAS Panel in this appeal is naturally of singular importance to the disputing parties, but comes much too late to provide guidance for other members of FIFA in relation to the expired regulations. This accident of timing cannot, however, interfere with the CAS Panel’s obligation to approach the interpretation of the relevant provisions independently and in strict accordance with the applicable law. Such is the responsibility attaching to the appellate judicial function.

The applicable regulations

4. It should be stressed at the outset that the substantive and procedural rules applicable in this appeal are no longer in force and that the problem which underlay this appeal will therefore not itself recur.
5. The current FIFA Regulations for the Status and Transfer of Players came into force on 1 July 2005 (art. 29(2) of the 2005 Regulations). Article 26 of the 2005 Regulations entitled ‘Transitional Measures’ in its original form provided as follows:
 1. *Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations.*
 2. *All other cases shall be assessed according to these Regulations.*
 3. *[...]*
6. By its Circular No. 995 of 23 September 2005, the FIFA Executive Committee amended paragraph 2 of Article 26 to read:
 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 mechanism*
 - c. *Labour disputes relating to contracts signed before 1 September 2001.*

Any cases not subject to this general rule shall 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.

7. The commentary provided in Circular No. 995 to this amendment does not wholly illuminate its purpose. The amendment seems to be directed to a situation where a case is submitted to FIFA after the 2005 Regulations came into force (1 July 2005) but concerns a dispute that arose prior to that date. If the application of the 2005 Regulations were to be contingent entirely upon the date of submission of the case, then the substantive provisions of the 2005 Regulation might thereby acquire retroactive effect.
8. The claims for a solidarity contribution by the Argentinean clubs involved in the training of the Player against Inter Milano were filed on 19 April 2004. It follows by virtue of Article 26(1) of the 2005 Regulations that the 2001 Regulations were applicable in the proceedings before the DRC. The DRC came to the same conclusion in its Decision.
9. There is no question of the retroactive effect of any substantive provisions governing the solidarity mechanism in this case: the transfer contract between Valencia and Inter Milano was dated 25 August 2003 and the DRC correctly applied the 2001 Regulations to the issues relating to the solidarity contribution due from Inter Milano to Asociación Deportiva Juan XXIII de Rosario.
10. The 2001 Regulations are supplemented by the Regulations Governing the Application of the Regulations for the Status and Transfer of Players, which came into force on the same date as the 2001 Regulations (art. 20 of the 2001 Application Regulations). Furthermore, the proceedings before the DRC was governed by the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber, which came into effect on 28 February 2002 (the “2002 DRC Procedural Rules”). The new procedural rules for the DRC did not come into force until 1 July 2005 and hence did not apply to the DRC proceedings in this case, insofar as the Argentinean Football Association first requested a ruling by the DRC on 19 April 2004 (art. 18 of the new procedural rules).

Jurisdiction of the Dispute Resolution Chamber

(i) Article 42 of the 2001 Regulations

11. The key provision for the allocation of competence between the Players’ Status Committee and the Dispute Resolution Chamber is Article 42 of Chapter XIV of the 2001 Regulations, which is entitled ‘Dispute resolution, disciplinary and arbitration system’. The full text of Article 42 is reproduced below:
 - (1) *Without prejudice to the right of any player or club to seek redress before a civil court in disputes between clubs and players, a dispute resolution and arbitration system shall be established, which shall consist of the following elements:*
 - (a) *Conciliation facilities, through which a low-cost, speedy, confidential and informal resolution of any dispute will be explored with the parties at their request by an independent mediator. Such mediation will not be a precondition to, nor suspend the resolution of the dispute according to formal mechanisms described in (b).*

- (b) (i) *The triggering elements of the dispute (i.e. whether a contract was breached, with or without just cause, or sporting just cause), will be decided by the Dispute Resolution Chamber of the FIFA Players' Status Committee or, if the parties have expressed a preference in a written agreement, or it is provided for by collective bargain agreement, by a national sports arbitration tribunal composed of members chosen in equal numbers by players and clubs, as well as an independent chairman. This part of the dispute must be decided within 30 days after the date on which the dispute has been submitted to the parties' tribunal of choice.*
- (ii) *If the decision reached pursuant to (i) is that a contract has been breached without just cause or sporting just cause, the Dispute Resolution Chamber shall decide within 30 days whether the sports sanctions or disciplinary measures which it may impose pursuant to Art. 23 shall be imposed. This decision shall be reasoned, also in respect of the findings made pursuant to (b)(i), and can be appealed against pursuant to (c).*
- (iii) *Within the period specified in (ii), or in complex cases within 60 days, the Dispute Resolution Chamber shall decide any other issues related to a contractual breach (in particular, financial compensation). This decision shall be reasoned, and can be appealed against pursuant to (c).*
- (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).*
- (v) *The Dispute Resolution Chamber may award financial compensation and/or impose disciplinary measures on the club concerned, if it is established pursuant to (b)(i) that a player terminated his contract with this club with just cause or sporting just cause and the player, as a result of the procedural provisions in these regulations, has been suspended from playing in the national championship of his new club. The Dispute Resolution Chamber shall rule within 60 days after the date on which a case has been submitted to it by the player concerned. This decision shall be reasoned, and can be appealed against pursuant to (c).*
- (vi) *All other measures provided for in these regulations will be taken by the FIFA Players' Status Committee, with the exception of those measures which are under the jurisdiction of the Disciplinary Committee.*
- (vii) *All rulings taken pursuant to these regulations shall be published.*
- (c) *Appeals contemplated in (b) shall be brought before a chamber of the Arbitration Tribunal for Football (TAF) provided for under Art. 63 of the FIFA Statutes, irrespective of the severity of any sanction or the amount of any financial award. This chamber of the Arbitration Tribunal for Football (TAF) shall be composed of members chosen in equal numbers by players and clubs and with an independent chairman, in compliance with the principles of the New York Convention of 1958. The tribunal must rule within 60 days or, in exceptional and particularly complex cases,*

within 90 days, after the date on which a case decided by the Dispute Resolution Chamber pursuant to (b) has been submitted to it. These appeals shall not have a suspensive effect. The tribunal's rulings shall be published.

- (2) *The conciliation facilities envisaged under 1(a) above shall be supplied by FIFA. The Dispute Resolution Chamber provided for under 1 (b) above shall be instituted in the FIFA Players' Status Committee. The rules of procedure of the Dispute Resolution Chamber are set out in the Application Regulations and may be reviewed from time to time by the FIFA Players' Status Committee.*
- (3) *Before reaching its decision on the matters covered under 1(b) above, the Dispute Resolution Chamber shall ask the national association which held the player's registration before the dispute arose to give its opinion.*

12. Article 42 of the 2001 Regulations envisages two separate bodies with independent rather than overlapping spheres of competence. Thus, Article 42 prescribes various matters within the competence of the Dispute Resolution Chambers in subsections (b)(i) to (b)(v) and then in subsection (b)(vi) allocates competence in residual matters arising out of the 2001 Regulations to the Players' Status Committee:

All other measures provided for in these regulations will be taken by the FIFA Players' Status Committee, with the exception of those measures which are under the jurisdiction of the Disciplinary Committee.

13. Moreover, the Players' Status Committee has its own 'Procedural Rules' enacted on 21 February 2003, which make no reference whatsoever to the Dispute Resolution Chamber.

(ii) *The 2002 DRC Procedural Rules*

14. An interpretation of Article 42 of the 2001 Regulations is facilitated by the relevant provisions of the 2002 DRC Procedural Rules which deal with the jurisdiction of the DRC. Article 2 reads:

- 1) *The jurisdiction of the DRC is set out in the Regulations, in particular in Article 42, and in the Application Regulations.*
- 2) *In particular, the DRC shall hear disputes:*
 - a. *In relation to training compensation fees as set out in Chapter VII (Articles 13 to 20) of the Regulations;*
 - b. *Between players and clubs relating to breaches of contract as set out in Chapter VIII (Articles 21 to 24) of the Regulations; and*
 - c. *Pursuant to Article 34(2) of the FIFA Statutes, where the Regulations or the Application Regulations so provide, or in accordance with a specific written mandate of the FIFA Players' Status Committee.*

15. Paragraph (a) refers to Chapter VII of the 2001 Regulations on 'Training compensation for young players' and therefore is irrelevant here. Paragraph (b) refers to Chapter VIII on 'Maintenance of Contractual Stability', which is also irrelevant as it concerns the stability of the contractual relationship between the footballer and his club. The subject matter of these two

Chapters of the 2001 Regulations also provides the focus of the more opaque text of Article 42 in subsections (b)(i) to (b)(v). In other words, paragraphs (a) and (b) of Article 2(2) of the 2002 DRC Procedural Rules is a succinct statement of the types of disputes contemplated by subsections (b)(i) to (b)(v) of Article 42 of the 2001 Regulations to be within the jurisdiction of the DRC.

16. The present dispute was primarily concerned with a dispute arising out of the solidarity mechanism in Article 25 of the 2001 Regulations. Article 25 of the 2001 Regulations is *omitted* from the list of provisions in relation to which the DRC has jurisdiction in Article 2(2) of the 2002 DRC Procedural Rules. It follows that Article 42 does not confer jurisdiction to the DRC in relation to disputes arising out of the solidarity mechanism either. Hence it is necessary to explore the scope of paragraph (c) of Article 2(2) of the DRC Procedural Rules.

(iii) *Article 2(2)(c) of the 2002 DRC Procedural Rules*

17. In accordance with paragraph (c) of the Article 2(2) of the 2002 DRC Procedural Rules, the DRC can be otherwise vested with jurisdiction pursuant to the 2001 Regulations or the 2001 Application Regulations.

18. In its Decision, the DRC concluded that the source of its jurisdiction was Article 25(2) of the 2001 Regulations:

With regard to the competence of the Chamber, art. 25 par. 2 of the FIFA Regulations for the Status and Transfer of Players (edition 2001) establishes that, it falls within the purview of the Dispute Resolution Chamber to review disputes concerning the distribution of the solidarity contribution.

19. Article 25 of the 2001 Regulations reads:

1. *If a non-amateur player moves during the course of a contract, a proportion (5%) of any compensation paid to the previous club will be distributed to the club(s) involved in the training and education of the player. This distribution will be made in proportion to the number of years the player has been registered with the relevant clubs between the ages of 12 and 23.*
2. *Details of the distribution mechanism are set out in the Application Regulations, including disciplinary measures to be imposed by the FIFA Dispute Resolution Chamber, in accordance with Art. 42, in case of non-observance of the obligation set forth in the previous paragraph.*

20. As noted in Article 25(2) of the 2001 Regulations, the 2001 Application Regulations also contain provisions in relation to the solidarity mechanism. Article 10 sets out the percentage apportionments to the former clubs of the player according to the age of the player. Article 11 of the 2001 Application Regulations, entitled 'Payment of solidarity contribution', reads as follows:

1. *The new club shall pay the amount due as a solidarity contribution to the training clubs pursuant to the above provisions at the latest within 30 days of the player's registration.*

2. *It is the responsibility of the new club to calculate the amount of the solidarity contribution and the way in which it shall be distributed in accordance with the player's career history. The player shall, if necessary, assist the new club in discharging this obligation.*
 3. *The FIFA Players' Status Committee may impose disciplinary measures on clubs or players that do not observe the obligations stipulated in the previous paragraphs. Appeals against these measures may be lodged to the Arbitration Tribunal for Football (TAF).*
21. Hence there is a very material contradiction between Article 25(2) of the 2001 Regulations and Article 11(3) of the 2001 Application Regulations insofar as the former contemplated that the 2001 Application Regulations will allocate competence to the 'Dispute Resolution Chamber' to impose 'disciplinary measures' with respect to the solidarity mechanism, whereas in actual fact the 2001 Application Regulations refer to the 'FIFA Players' Status Committee'. The Panel further notes that FIFA Circular No. 769 of 24 August 2001 also refers to the FIFA Players' Status Committee as the competent body in relation to disputes concerning the solidarity mechanism.
22. The DRC's decision to uphold its jurisdiction on the basis of Article 25(2) of the 2001 Regulations is thus open to challenge. First, if FIFA had intended that the DRC were to have jurisdiction over 'disciplinary measures' in relation to the solidarity mechanism in Article 25, then one would expect Article 42 of the 2001 Regulations to reflect this allocation of competence. Second, one would also expect that Article 2(2) of the 2002 DRC Procedural Rules would specifically mention the DRC's competence over disputes arising out of Article 25 of the 2001 Regulations; especially given that they were drafted after the 2001 Regulations. Third, as previously mentioned, Article 11(3) of the 2001 Application Regulations directly contradicts the allocation of competence in Article 25(2) of the 2001 Regulations by vesting jurisdiction with the Players' Status Committee rather than the DRC. Fourth, in either case, both Article 25(2) of the 2001 Regulations and Article 11(3) of the 2001 Application Regulations refer to jurisdiction to impose 'disciplinary measures'. This would appear not to cover any contractual dispute between the new club and the former club in respect of liability for the solidarity contribution.
- (iv) *Reference to a 'specific written mandate of the FIFA Players' Status Committee' in Article 2(2) of the 2002 DRC Procedural Rules*
23. There is, however, an alternative basis on which to uphold the DRC's jurisdiction in this case; namely the reference to a 'specific written mandate of the FIFA Players' Status Committee' in Article 2(2) of the 2002 DRC Procedural Rules. A referral by the FIFA Players' Status Committee's of a dispute to the DRC would constitute a 'specific written mandate' for the purposes of Article 2(2). It appears that such a referral has been made in the present case. On 18 April 2006, Melanie Velasco of the 'FIFA Players' Status Department' wrote to the Argentinean Football Association, the Spanish Football Federation and the Italian Football Federation in the following terms:

We refer to the above-mentioned matter and in this regard, would like to inform you that the case at hand will be submitted to the Dispute Resolution Chamber of the FIFA Players' Status Committee for a formal decision in the occasion of its next meeting, on 27 April 2006.

24. The 'above-mentioned matter' is described as follows:

Distribution of solidarity contribution in connection with the player C. (Clubs AD Jaun XXIII, A. Rosario Central and A. Boca Juniors, Argentina / Club Internazionale Milano S.p.A., Italy; Club Valencia C.F., Spain.

25. By this communication, the FIFA Players' Status Committee has vested the DRC with jurisdiction of a dispute concerning the 'distribution of solidarity contribution in connection with the player C.' in accordance with Article 2(2) of the 2002 DRC Procedural Rules.
26. Accordingly, this Panel concludes that the DRC had jurisdiction over the dispute concerning the 'distribution of solidarity contribution in connection with the player C.', albeit for reasons which differ from those stated by the DRC in its Decision.

Merits

- (i) *Article 25(1) of the 2001 Regulations*

27. The issue before the Panel is a narrow question of statutory interpretation in respect of Article 25 (1) of the 2001 Regulations, which reads:

If a non-amateur player moves during the course of a contract, a proportion (5%) of any compensation paid to the previous club will be distributed to the club(s) involved in the training and education of the player. This distribution will be made in proportion to the number of years the player has been registered with the relevant clubs between the ages of 12 and 23.

28. Article 25(1) of the 2001 Regulations is supplemented by Articles 10 and 11 of the 2001 Application Regulations. Article 10 reads:

If a non-amateur player moves during the course of a contract, a proportion (5%) of any compensation paid to the former club will be redistributed as a solidarity contribution to the clubs involved in the training and education of the player concerned over the years. This solidarity contribution shall be apportioned between the clubs concerned according to the age of the player at the time they provided him with training and education (...).

29. Article 11 of the 2001 Application Regulations reads:

1. *The new club shall pay the amount due as a solidarity contribution to the training clubs pursuant to [Article 10] at the latest within 30 days of the player's registration.*
2. *It is the responsibility of the new club to calculate the amount of the solidarity contribution and the way in which it shall be distributed in accordance with the player's career history. The club shall, if necessary, assist the new club in discharging this obligation.*

30. Article 25(1) of the 2001 Regulations and Article 10 of the 2001 Application Regulations appear to require the new club to distribute 5% of the amount paid to the former club to the clubs involved in training the player in question. This interpretation is justified for the following reasons.
31. First, it follows from the plain meaning of the words used in both provisions and in particular the use of the past participle ‘paid’ in the first sentence, which implies that the compensation is first *paid* to the former club and then the solidarity contribution is calculated by reference to that amount by the new club and distributed to the training clubs.
32. Second, it accords with the reality that it is the sole responsibility of the new club to calculate the amount of the solidarity contribution and to transfer that amount to the training clubs. This is made clear by Article 11(2) of the 2001 Application Regulations. In other words, the legal relationship created by Article 25(1) is between the new club and the training clubs. The former club is not privy to this relationship and, moreover, the training clubs have no right to proceed against the former club to recover the solidarity contribution.
33. Suppose the new club and the former club in their transfer contract had decided to apportion the liability for the solidarity contribution equally so that each club would be liable to pay half of the relevant contribution. Suppose further that the former club refused to make its share of the payment. This state of affairs would not absolve the new club from its legal obligation, imposed by Article 25(1) of the 2001 Regulations, to pay the full solidarity contribution to the training clubs. In other words, the new club cannot excuse its failure to pay the solidarity contribution to the training clubs by reference to any aspect of its contractual relationship with the former club, which is *res inter alios acta*. It would instead be incumbent upon the new club to seek damages for breach of contract against the former club.
34. Third, the foregoing considerations indicate that there is a clear distinction between disputes concerning the solidarity mechanism between the new club and the training clubs and disputes concerning contractual matters between the new club and the former club. At least in the 2005 Regulations, it is very clear that the DRC is vested with competence over the former type of dispute, whereas it is the Players’ Status Committee which has competence over the latter. If the new club, with the sole responsibility for calculating and paying the solidarity contribution, fails in discharging that responsibility, then the training clubs can seek a remedy against the new club through proceedings before the DRC. There would be no reason for the former club to be a party to such proceedings; indeed there would be no legal basis to make it a party. If the new club and the former club have agreed on the apportionment of the solidarity contribution in their transfer contract, and the former club has breached that agreement, then such a dispute is not within the competence of the DRC. Instead, the new club would bring its claim for breach of contract against the former club before the Players’ Status Committee. There would be no reason for the training clubs to be parties to such proceedings; indeed, once again, there would be no legal basis to join them as parties.
35. Fourth, this interpretation facilitates certainty in the dealings between the former club and the new club. The new club’s obligation to make the solidarity contribution arises after the player

in question has been transferred and registered with the new club pursuant to Article 11(1) of the 2001 Application Regulations. It is likely that in many situations the beneficiaries of any solidarity contribution (*i.e.* the training clubs) will not be known at the time the contract between the new club and the former club is executed. It is also possible that the precise amount of any solidarity contribution will not be known either. (For instance, if the player transfers clubs before the age of 23, the solidarity contribution will be less than 5%.) The present case provides a good illustration of the known unknowns at the time of contracting in relation to the solidarity mechanism: the beneficiaries and the amount of the solidarity contribution were only determined definitely by the DRC almost three years after the Transfer Contract was signed.

36. Fifth, the interpretation of Article 25(1) of the 2001 Regulations has only been considered in passing by other CAS Panels. For instance, in CAS 2006/A/1026-1030, the Panel reasoned as follows (paras 8.2.4 and 8.2.5):

The 5% contribution is to be construed as a ceiling rather than as an absolute requirement. The obligation to apportion the solidarity contribution amongst the former training clubs is on the new club. The latter benefits from the increase of the value of the Player, deriving from the training and education provided by all former training clubs, including possibly the transferring club. The solidarity mechanism is meant to redistribute the value of the training given to the player. Such system may be compared, to some extent, to the levy of a tax.

The FIFA Regulations provide that it is for the new club to calculate and to pay a solidarity contribution to the former clubs. The ratio legis of this system is that it is easier for the receiving club to determine the former clubs of the Player. The player being at the disposal of the receiving club, he can assist his new employer in this task (see Art. 11 par. 2 of the FIFA Application Regulations).

37. This Panel agrees with these statements, which support its interpretation of Article 25(1) of the 2001 Regulations. To the extent that the Panel CAS 2006/A/1026-1030 appeared to infer that the 5% solidarity contribution can be ‘retained’ from the former club (the concluding sentence of para. 8.2.5 reads: “*As it is for the receiving club to calculate and to distribute the solidarity contribution, the system provides that an amount of 5 % which in most cases corresponds to the amount of the solidarity contributions distributed, can be retained by the receiving club*”), then this was not critical to the Panel’s decision and, in any case, cannot be followed by the present Panel for the reasons already cited (*see also*: CAS 2006/A/1018).
38. For these reasons, it is reasonable to interpret Article 25(1) of the 2001 Regulations in accordance with the plain meaning of that text so that the new club knows that it is obliged to pay up to 5% of the amount paid to the former club by way of a solidarity contribution upon signing a transfer contract. The identity of the beneficiaries and the precise amount of the contribution may need to be established later with the co-operation of the player in question, as envisaged by Article 11(2) of the 2001 Application Regulations. It is also reasonable to infer that Article 25(1) allocates the burden of this uncertainty to one party alone (the new club), rather than imposing that burden on both parties after their contract has been executed and performed. This is especially pertinent where the rules make one party alone (the new club) responsible to ensure that the solidarity contribution is paid, as stipulated by Article 11(2) of the 2001 Application Regulations. A contrary interpretation would lead to the necessity of later adjustments as between the parties when the precise amount of the solidarity contribution is

ascertained. This may also cause difficulties in the allocation of competences between different organs of FIFA.

(ii) *FIFA Circular No. 826 of 31 October 2002*

39. The foregoing interpretation of Article 25(1) of the 2001 Regulations and Article 10 of the 2001 Application Regulations is contested by Inter Milano and, it would appear, by members of the Executive Committee of FIFA. Valencia has not expressed a clear view of its own on this point.

40. A contrary interpretation is said to be endorsed by FIFA Circular No. 826 of 31 October 2002. Under the potentially deceptive heading 'player passport' on page 4 of the Circular appears the following text:

*[W]e wish to clarify the wording of art. 10 of the Application Regulations. The new club of a player responsible for paying compensation to the player's former club is also responsible for ensuring that the 5% solidarity contribution is distributed to the clubs involved in the training and education of the player. **Furthermore, we wish to outline that the 5% solidarity contribution is to be deducted from the amount payable to the player's former club.***

41. During the hearing, the Panel asked of the Parties whether it was bound to follow this interpretation of Article 10 of the 2001 Application Regulations, which was endorsed in the DRC's Decision. The Parties confirmed that it was not so obliged. The reason is straightforward. FIFA Circular No. 826 was issued by the Acting General Secretary of FIFA. The General Secretary of FIFA, in accordance with the FIFA Statutes, does not have the power to amend FIFA regulations. That power, pursuant to Article 31 of the present FIFA Statutes, is vested in the Executive Committee.

42. The fourth paragraph of the Circular on page 1 reads:

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.

43. This paragraph of Circular No. 826 makes it very clear that, to the extent that the Executive Committee has endorsed the Circular, then it was in relation to matters listed in that paragraph, which makes no mention of the solidarity mechanism. This follows from Article 45 of the 2001 Regulations, which is cited in the fourth paragraph of Circular No. 826 as the source of authority for enacting the Circular:

Any matter not provided for under these regulations shall be settled by the FIFA Players' Status Committee, subject to review by the FIFA Executive Committee.

44. The distribution of the solidarity contribution is a matter provided for by the 2001 Regulations and the 2001 Application Regulations and this might explain why the matters listed in the fourth paragraph on page 1 of the Circular does not include the solidarity mechanism. The question is, therefore, whether the final sentence of the quoted passage under the heading ‘player passport’ on page 4 of Circular No. 826 (in bold at paragraph 40 above) is merely a clarification of Article 10 of the 2001 Application Regulations (and by implication Article 25(1) of the 2001 Regulations) or purports to amend that provision [see CAS 2004/A/797, para. 21 (“*The notion that a Circular may create (i.e. grant) certain rights is inconsistent with its role as merely interpretive. The precedent involved regarding Circular No. 826 (which at any rate is not binding on this Panel) appears to have concerned the **practical procedure** for ensuring that the Regulations were given effect, and not the creation of autonomous substantive rights and obligations*”)].

45. Following the hearing, Inter Milano wrote to FIFA on 23 May 2007 to put the latter on notice that, in its estimation, “*it seemed clear that the Panel was going to disregard the principle according to which the solidarity contribution is to be deducted from the transfer compensation payable to the former club*”. Neither CAS nor Valencia were copied on this correspondence to FIFA.

46. FIFA, through the Director of the Legal Division and the Head of Players’ Status, responded on the same day to CAS rather than to Inter Milano. At the outset of this correspondence, FIFA noted the following:

[D]espite being aware that, since we are not a party in the procedures at stake we cannot actively intervene in the affairs, we deem that, in view of the importance and the range of the statements presented by the appellant, we cannot leave the relevant comments without any reaction.

47. FIFA then explained its position on the status of Circular No. 826:

First and foremost, we need to stress that the FIFA Circular No. 826 dated 31 October 2002, unmistakably, merely clarified the somewhat undefined wording of Art. 25. par. 1 of the FIFA Regulations for the Status and Transfer of Players... in connection with Art. 10 of the FIFA Regulations governing the Application of the Regulations and did not at all mean to change or to alter the contents, aim and purpose of the said provisions.

48. It follows from this statement that FIFA also understands that Article 25(1) of the 2001 Regulations or Article 10 of the 2001 Application Regulations cannot have been amended by Circular No. 826. Notwithstanding FIFA’s explanation of its intentions the question remains: does in fact the FIFA Circular No. 826 merely ‘clarify’ these provisions, or does it rather have the purported effect of amending them?

49. The Panel is compelled to conclude that the quoted passage of FIFA Circular No. 826 goes beyond a mere clarification of Article 10 of the 2001 Application Regulations and, by implication, Article 25(1) of the 2001 Regulations. The critical sentence of FIFA Circular No. 826, which is highlighted in bold in paragraph 40, reads:

[W]e wish to outline that the 5% solidarity contribution is to be deducted from the amount payable to the player’s former club.

50. Neither Article 25(1) of the 2001 Regulations, nor Articles 10 or 11 of the 2001 Application Regulations, employs the words ‘deducted’ or ‘payable’. The use of these words in the FIFA Circular implies, contrary to the plain meaning of the aforementioned provisions, that the solidarity contribution is to be *withheld* by the new club from the amount that *will be paid* to the former club. The text of Article 25(1) of the 2001 Regulations and Articles 10 or 11 of the 2001 Application Regulations cannot support this purported ‘clarification’ without being amended. Moreover, such an amendment, if endorsed, could introduce complications into the relationship between the new club and the former club, for the reasons already given. The present dispute illustrates the potential problems.
51. In the proceedings before the DRC, Inter Milano was the Respondent, whereas the Claimant was the Asociación Deportiva Jaun XXII de Rosario – one of the Argentine clubs responsible for the training of the transferred player C. Valencia was named as an ‘intervening party’. The DRC did not elaborate upon the procedural status of an ‘intervening party’, nor did it make reference to the applicable procedural rules in this respect. Article 6(8)(d) of the 2002 DRC Procedural Rules may have been relevant:

The Chairman of the DRC will ensure the fair and expeditious handling of a dispute by the DRC. To this end, he may:

[...]

d. Allow a third party to the proceedings to intervene if it sees fit to do so, taking into account the time limits set out in these Rules; (...).
52. But regardless of whether this was the proper basis for making Valencia an ‘intervening party’, the fact remains that it was not a Claimant or a Respondent before the DRC. Valencia had, moreover, unequivocally objected to being made a party to the proceedings in its submission of 6 March 2006 to FIFA, as it was entitled to do. Inter Milano complains in this appeal that the DRC had failed to make any ruling against Valencia, despite having made findings with respect to Valencia’s submissions as an ‘intervening party’. It may be that the DRC refrained from doing so precisely because it considered that any dispute between Inter Milano and Valencia would not strictly fall within its competence, although it might nonetheless have considered it useful to state its own views once the issue had been debated before it in order to assist the clubs. In the meantime, Inter Milano has sought to protect its interests by instituting proceedings before the Players’ Status Committee against Valencia in case the DRC (and therefore this Panel) cannot make an order against Valencia. But the Players’ Status Committee has communicated to Inter Milano, by its letter of 20 February 2007, that it cannot proceed while the present appeal is pending.
53. The important point is that if the position reflected in FIFA Circular No. 826 were to be adopted, this procedural problem could become an entrenched part of the regulatory framework. The new club would withhold 5% of the compensation to be paid to the former club before the transfer is consummated (and before the new club can demand the cooperation of the player in identifying the relevant training clubs). Then, as is frequently the case, there may be a dispute before the DRC between the new club and the training clubs in relation to the proportions of the solidarity contribution to be distributed to thereto and perhaps the actual amount of the solidarity contribution. Therefore, depending upon the outcome of those

proceedings before the DRC, either the new club or the former club might have to bring new proceedings before the Players' Status Committee to eliminate any discrepancy between the amount withheld by the new club from the former club and the amount actually paid by the new club to the training clubs.

54. Such a scenario, which has been played out in the present case, is potentially disruptive. The Panel is sympathetic to the plight of both Parties in this appeal, who have expended effort and expense in trying to resolve their dispute against a background of complex regulations and multifarious judicial *fora* with overlapping competences.
55. The Panel is bound to uphold the plain meaning of Article 25(1) of the 2001 Regulations, as reproduced in Article 10 of the 2001 Application Regulations, and therefore disregard the contradictory interpretation placed upon those provisions by FIFA Circular No. 826. The Panel therefore concludes that Inter Milano alone is liable to pay the solidarity contribution to the training clubs in relation to the transfer of C. Inter Milano and Valencia were at liberty to allocate the burden of the solidarity contribution differently in their Transfer Contract, but they have not done so. The Parties' submissions on the Transfer Contract are considered in the next section.

(iii) *The contractual issue*

56. The Parties have debated the proper interpretation of clause 2 of the Transfer Contract, which provides:

F.C. Internazionale, as compensation for the transfer of the ownership of the contract, shall pay the total amount of € 2,500,000.00... net of all costs and expenses for Valencia C. de F.

57. The Panel considers that clause 2 of the Transfer Contract is irrelevant to the question of which of the Parties is liable to pay the solidarity contribution in the present case. Spanish law was expressly chosen by the Parties to govern the Transfer Contract pursuant to clause 6 thereof. In accordance with the interpretive rules in Articles 1281 and 1282 of the Spanish Civil Code, it is impossible to conclude that the literal meaning of the words 'net of all costs' includes the solidarity contribution. This standard phrase appears in contracts in a vast number of different commercial contexts and it cannot be read as covering a specific liability imposed by the special legal regime relating to the transfer of footballers enacted by FIFA. In short, if the parties to a transfer contract governed in part by the FIFA regulations wish to make provision in respect of the liability for the payment of the solidarity contribution, then they must do so by wording which conveys such an intention.
58. This conclusion on the literal meaning of the words in clause 2 of the Transfer Contract must then be tested by reference to evidence of any contrary intention of the Parties in accordance with Article 1282 of the Spanish Civil Code. There is certainly no evidence of a common intention concerning liability for the solidarity contribution before the execution of the Transfer Contract. At the hearing, the witnesses of both Parties confirmed unequivocally and without reservation that liability for the payment of the solidarity contribution was never raised during

the negotiations. Hence there is nothing on the factual record to contradict the literal interpretation of clause 2: it is entirely neutral in relation to the issue of which of the Parties is liable to pay the solidarity contribution pursuant to Article 25(1) of the 2001 Regulations.

The Court of Arbitration for Sport rules that:

1. The appeals filed by Internazionale di Milano SpA against the decisions issued by the Dispute Resolution Chamber dated 27 April 2006, regarding the solidarity payment for the transfer of the player C., are dismissed.
2. The decisions issued by the Dispute Resolution Chamber on 27 April 2006 are confirmed.
3. (...).