

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 January 2009,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Philippe Diallo (France), member

Mohamed Mecherara (Algeria), member

Theo van Seggelen (Netherlands), member

Carlos Soto (Chile), member

on a matter between the club

Z,

as Claimant

and the club

S,

as Respondent

regarding a dispute for training compensation in connection with
the player B.

I. Facts of the case

1. The player B (hereinafter: *the player*), born on 7 April 1987, was, according to the player passport issued by the S Football Association, registered as an amateur for the S club, FC Z (hereinafter: *the Claimant*), from 26 July 1998 to 3 October 2005.
2. The S season runs from July to June of the following year.
3. According to the player passport issued by the I Football Federation, the player was registered for the club, M, as an amateur, from 4 October 2005 to 1 July 2006.
4. According to the same player passport, the player was then registered for the club, S (hereinafter: *the Respondent*), as a professional, from 19 September 2006, that is, during the season of the player's 20th birthday.
5. According to details provided by the I Football Federation, the Respondent, being a Serie C club at the time of the player's registration, belongs to category 3, and according to details provided by the S Football Association, the Claimant also belongs to category 3 (indicative amount: EUR 30,000).
6. On 27 June 2007, the Claimant lodged a claim with FIFA, claiming that the player, whom it trained between the ages of 12 and 19, for seven football seasons, from 1 July 1998 until 30 June 2005, signed his first professional contract with the Respondent, and that therefore the Respondent owed training compensation for the training and education of the player by the Claimant in the amount of EUR 130,000.
7. Upon receipt of the claim, the Respondent replied that the player, prior to being registered with the Respondent on 19 September 2006, had signed a first professional contract with the club M on 1 July 2005. Therefore, it asserted that it did not owe training compensation to the Claimant.
8. In reply thereto, the Claimant adhered to its claim and, in particular, stressed that the player passport issued by the I Football Federation showed that the Respondent was the club where the player had signed his first professional contract.
9. On 8 April 2008, the Respondent insisted on the fact that the player had signed a first professional contract with the club M for EUR 6,000, without, however, submitting a copy of such contract. Furthermore, it argued that the player had signed a contract of a high amount with the club M and this should be an indication that the player had terminated its training and education before the age of 21.

10. Finally, referring to Art. 6 par 3 of Annex 4 of the Regulations on the Status and Transfer of Players, the Respondent argued that the Claimant should have offered a contract to the player and that no documentary evidence showed that this had been complied with.
11. On 1 and 4 July 2008, the Respondent submitted to FIFA an original copy and the translation of a written agreement signed on 30 August 2005 between the club M and the player.
12. From the contents of this agreement, it can be noted that:
 - the player, as a *"non-professional"*, commits to provide his services to M from 30 August 2005 until 30 June 2006, but at the same time, his sporting activity excludes any kind of subordinate activity,
 - M *"assures Mr B the sum of 6.000,00 (six thousand) Euro under par. 94 ter point 6 N.O.I.F."*, together with the *"necessary conditions for a proper technical training in accordance with his non-professional status"* (Art. 2 of the agreement).
 - Art. 5 provides that M *"will distribute the sum established in the economical agreement, in ten monthly instalments"*.
13. After the Claimant was informed of the contents of the aforementioned agreement, it still upheld its position, and in particular, asserted that the contract provided by the Claimant is not a professional contract but rather corresponds to *"some kind of scholarship which sometimes is paid to amateurs"*, and that the decisive factor in the documentation submitted is the player passport issued by the I Football Federation, which states that the player was registered for M as an amateur.
14. Furthermore, the Claimant emphasized that the Regulations on the Status and Transfer of Players, edition 2001, are applicable to the dispute, and that when the player left the Claimant club, in June 2005, the said Regulations did not provide the obligation for the former club to offer a contract to the player.
15. In addition, the Claimant stressed that, in any case, it had showed some interest in the player, and that it could produce a written statement from the President of the club in order to confirm this fact. However, such evidence was never submitted to FIFA.
16. Finally, on 13 October 2008, the Respondent upheld its position and submitted a written statement from the player, whereby the latter certified that the Claimant had never offered him a contract during the period of registration.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 27 June 2007. Consequently, the edition 2005 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 18 par. 2 and 3 of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and art. 22 lit. (d) of the Regulations on the Status and Transfer of Players (edition 2005) the Dispute Resolution Chamber is competent to decide on the present litigation with an international dimension concerning the training compensation claimed by the Claimant for the training and education of the player B.
3. Furthermore, and taking into consideration that the player was registered with his new club on 19 September 2006, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008), and considering that the present claim was lodged on 27 June 2007, the previous version of the regulations (edition 2005; hereinafter: Regulations) is applicable to the matter at hand as to the substance.
4. In continuation, and entering into the substance of the present matter, the members of the Chamber started by acknowledging the established facts of the case and the arguments of the parties as well as the documents contained in the file, and in this respect, in view of the circumstances of the present case, first of all stated that the following questions had to be tackled:
 - 1) Is the claimant entitled to receive training compensation from the respondent?
 - 2) In the affirmative, which is the exact amount of the compensation?
5. With regard to the first of these questions, the Chamber stated that, as established in art. 1 par. 1 of Annexe 4 in combination with art. 2 of Annexe 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when the player concerned is registered for the first time as a Professional, or when a Professional is transferred between two clubs of two different Associations, before the end of the season of the player's 23rd birthday. In the latter case, training compensation is owed only to the former club of the player, but not to the previous clubs (art. 3 par. 1 of Annexe 4 of the Regulations).

6. In this regard, the Dispute Resolution Chamber turned its attention to the Respondent's statement of defence, according to which the player had signed a first professional contract with an other club, M. At the same time, the Chamber took due note of the statements of the Claimant, according to which the said contract was to be considered as a scholarship, and that the status of the player, as confirmed by his player passport issued by the I Football Federation, was therefore, at the time of this registration with the club M, that of an amateur.
7. In view of the aforementioned, the Chamber established that the sole relevant criteria to determine a player's status are, on the one hand, the fact that the player has a written contract, and, on the other hand, the player's remuneration. With regard to the latter criteria, the members of the Dispute Resolution Chamber particularly pointed out that, according to art. 2 par. 2 of the Regulations, if such remuneration exceeds the expenses and costs that he effectively incurs for his footballing activity, the player shall be considered to be a professional.
8. Furthermore, the Chamber deemed fundamental to emphasize that, for the appreciation of a player's status, the legal nature or the designation of the agreement between a club and a player is irrelevant. In addition, the Chamber strongly affirmed that the mention of a player's status on a player passport issued by the federation of the club for which he was registered does not, also, constitute a relevant criterion.
9. On account of the above, the Chamber first of all declared that the player and the club M had signed a written contract. Having declared that, the Chamber proceeded to an analysis of the contract signed between the club M and the player on 1 July 2005. In particular, the panel acknowledged that the player was to receive, on the basis of the said contract, an annual remuneration of EUR 6,000.
10. Furthermore, the Chamber acknowledged the fact that, according to the said agreement, the player's sporting activity should exclude any kind of subordinate activity.
11. Therefore, in consideration of the aforementioned elements of the player's employment contract, the panel held that the player's remuneration, in its opinion, exceeded the expenses and costs effectively incurred by his footballing activity.

12. In continuation, the members of the Dispute Resolution Chamber focused their attention on other possible indications that could determine the player's status with regard to his registration with the club M. In this regard, the members observed that, according to art. 18 par. 2 of the Regulations, the minimum length of a contract is its effective date until the end of the season. In the light of the aforementioned provisions, the panel emphasized that the litigious contract referred to a predetermined duration, i.e. the season 2005-2006. Thus, the members deemed that one of the *essentialia negotii* of a professional contract, namely, the reference to a predetermined duration of the contract, was therewith also met in the present case.
13. Furthermore, the Chamber highlighted the fact that, according to art. 8 of the Regulations, the application for registration of a professional must be submitted together with a copy of the player's contract. In this respect, it observed that, although the player passport indicated that the status of the player was that of an amateur, his contract with the club M had been deposited at the I Football Federation. Thus, the panel deemed that this additional element should be a further indication of the player's status.
14. The above considerations therefore led the Dispute Resolution Chamber to conclude that, in the present case, the contract signed between the player and the club M was, in spite of its denomination and of the terminology used by the parties in the drafting thereof, a professional contract. In this regard, the Chamber stressed that the player was not, under the said contract, entitled to exercise any other activity than football, and that the latter consideration had convinced its members even more that the player's status was that of a professional.
15. Moreover, the Chamber was eager to emphasize that the fact that the player's passport mentioned that he was registered for the club M as an amateur could not be considered as a decisive factor in its appreciation of the player's status at the time of his registration with the said club. Additionally, the fact that the contract had been deposited at the I Football Federation and that it referred to a predetermined period of time were more indications that the litigious contract was a professional contract.
16. Consequently, the members of the Chamber established that the player's move to the Respondent should be considered as a subsequent transfer of a professional player from the club M to the Respondent rather than a first registration as a professional.

17. In view of all of the above, and, particularly, based on art. 3 par. 1 of Annexe 4 of the Regulations, the Dispute Resolution Chamber ruled that the Claimant is not entitled to receive any training compensation for the training and education of the player B from the Respondent on the basis of a possible first registration as a professional, in view of the fact that the player had signed a first professional contract with an other club, M, and therefore, decided to fully reject the Claimant's claim.

III. Decision of the Dispute Resolution Chamber

1. The claim lodged by the Claimant, FC Z, is rejected.

Note relating to the motivated decision (legal remedy):

According to art. 63 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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Encl. CAS directives